

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Application of SBC Communications, Inc.)	
Pursuant to Section 271 of the)	CC Docket No. 00-217
Telecommunications Act of 1996)	
To provide In-Region, InterLATA Services)	
in Kansas and Oklahoma)	

**REPORT OF THE STATE CORPORATION COMMISSION OF THE
STATE OF KANSAS ON SOUTHWESTERN BELL TELEPHONE
COMPANY'S COMPLIANCE WITH SECTION 271**

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The Federal Telecommunications Act of 1996 (Federal Act) requires the Federal Communications Commission (FCC) to act on the application of Southwestern Bell Telephone Company (SWBT) to offer in-region, interLATA telecommunications services within 90 days after receiving SWBT's request for such authorization. SWBT filed its application for authorization in Kansas on October 26, 2000. The Federal Act states that the FCC should consult with the state commission of any state that is the subject of an application to verify the Bell Operating Company's compliance with the requirements of subsection 271(c). 47 U.S.C. § 271(d)(2)(B). The purpose of this report is to provide the FCC with the analysis used by the State Corporation Commission of the State of Kansas (the Commission) to determine SWBT has met the checklist contained in § 271 and the provisions of § 272.

I. APPLICABLE LAW

Section 271 of the Federal Act requires the FCC to determine whether: (1) SWBT has entered into binding agreements with one or more competing providers if proceeding under § 271(c)(1)(A), or Track A; (2) SWBT has successfully satisfied the 14 items of the competitive checklist of § 271(c)(2)(B); (3) SWBT will carry out, pursuant to § 271(d)(3)(B), its interLATA authority through a separate affiliate as required by § 272; and (4) granting the application is consistent with the public interest, convenience, and necessity under § 271(d)(3)(C). *Application of SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271*

of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238 (Released June 30, 2000) (*Texas Order*), ¶ 9.

Additionally, before making a determination under § 271, the FCC must consult with the United States Attorney General and state commission of the state that is the subject of the application for in-region, interLATA authority. 47 U.S.C. § 271(d)(2)(A), (B). If a Bell Operating Company (BOC) is filing under Track A, the state commission's inquiry should focus on whether the BOC has entered into one or more interconnection agreements with facilities-based competitors that collectively serve residential and business customers and whether the access or interconnection provided by the BOC includes unbundled network elements and satisfies the competitive checklist of § 271(c). *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, CC Docket 97-137, Memorandum Opinion and Order, FCC 97-137 (Released August 19, 1997) (*Ameritech Michigan Order*), ¶¶ 85, 99.

For the benefit of the FCC, this Commission will review SWBT's compliance with separate affiliate requirements of § 272 and consider whether approval of SWBT's application is in the public interest. Finally, although neither a performance monitoring plan nor an expedited dispute resolution process is explicitly required by the Federal Act, these will be discussed as well. Based on the evidence presented, the Commission concludes a performance monitoring plan and an expedited dispute resolution process are essential to enable the Commission to evaluate SWBT's continuing compliance with § 271 requirements if SWBT is authorized to provide in-region, interLATA service.

The FCC explained the role of a state commission in the FCC's process of evaluating a BOC's § 271 application as follows:

We will look to the state to resolve factual disputes wherever possible. Indeed, we view the state's and Department of Justice's roles to be similar to that of an "expert witness." Given the 90-day statutory deadline to reach a decision on a section 271 application, the [FCC] does not have the time or the resources to resolve the enormous number of factual disputes that inevitably arise from the technical details and data involved in such a complex endeavor. Accordingly, as discussed above, where the state has conducted an exhaustive and rigorous investigation into the BOC's compliance with the checklist, we may give evidence submitted by the state substantial weight in making our decision.

Texas Order, ¶ 51.

Staff of the Kansas Corporation Commission (Staff) filed an exhaustive report (Staff's Report) on August 21, 2000, and addenda to the report on September 27 and 28, 2000. In making this report to the FCC, the Commission has relied upon Staff's Report and the addenda.

The Commission also has reviewed and considered comments and filings by SWBT and other parties, many of whom are competitive local exchange carriers (LECs). The decision of this Commission is based upon the entire record developed in this case. For convenience, this report will frequently refer to the summary of evidence contained in Staff's Report and should be read in conjunction with it.

II. BACKGROUND INFORMATION

On January 21, 1997, the Commission opened this docket to examine SWBT's application for in-region, interLATA telecommunications service under section 271 of the Federal Act. 47 U.S.C. § 271. The Commission ordered SWBT to file an application with the Commission at least 90 days prior to the date it intended to file an application with the FCC. On February 17, 1998, SWBT filed its initial application with the Commission. Commencing on June 2, 1998, the Commission conducted thorough hearings on the application and subsequently the parties submitted briefs. On November 18, 1998, the Commission issued an Interim Report (Interim Report) that detailed which of the 14-point checklist items in § 271(c) SWBT had satisfied, but determined SWBT had not complied with all the checklist items. The Commission's main concerns were SWBT's lack of performance measures and inadequate operational support systems (OSS). The Commission directed SWBT to continue providing information to the Commission regarding its compliance with § 271.

On March 2, 1998, SWBT filed a § 271 application with the Texas Public Utilities Commission (Texas PUC). The Texas PUC, as part of its review of the application, ordered independent third party testing of SWBT's OSS. Additionally, the Texas PUC, SWBT, and the Texas competitive LECs began a collaborative process that resulted in a model Texas § 271 Interconnection Agreement (T2A) that included performance measures and a performance remedy plan. The Texas PUC approved the T2A on December 16, 1999, voting unanimously to support SWBT's § 271 application. On January 10, 2000, SWBT filed its application with the FCC seeking authority to provide in-region, interLATA service in Texas. Based on deficiencies identified by the Department of Justice, SWBT supplemented its application on April 5, 2000. The FCC ultimately approved SWBT's Texas application on June 30, 2000.

On December 16, 1998, Staff filed a motion suggesting a process to address the concerns identified in the Kansas Commission's Interim Report, including a series of meetings that involved all parties. SWBT agreed with the process proposed in the motion, but requested that it be allowed to initiate the process after SWBT believed it had addressed the deficiencies. Response of Southwestern Bell Telephone Company to Staff's Motion to Establish Procedure, filed December 28, 1998, p. 1. AT&T Communications of the Southwest, Inc., believed the process should be postponed until similar proceedings were complete in Texas and Missouri. AT&T's Response to Staff's Motion, filed December 28, 1998, p. 2. On September 29, 1999, the Commission issued an order agreeing to postpone moving forward until the proceedings in Texas and Missouri were complete.

After the Texas PUC approved SWBT's application, SWBT consulted with Staff and agreed to file (1) a collocation tariff; (2) performance measures with Kansas-specific penalties; (3) Texas-approved OSS test results that accommodate Kansas volumes; and (4) an interconnection agreement based on the T2A in Texas, which later became known as the K2A.

On March 16, 2000, SWBT filed with the Commission the § 271 application it intended to file with the FCC. The Commission asked for comments in two phases. Initial comments were limited to the model Kansas § 271 Interconnection Agreement (K2A), performance measures, and the performance remedy plan. Initial comments were filed by the Citizens' Utility Ratepayer Board (CURB), Telecommunications Resellers Association, MCI Worldcom (MCIW), AT&T Communications of the Southwest, Inc. (AT&T), Sprint Communications Company, L.P. (Sprint), and Birch Telecom of Kansas, Inc. (Birch). Comments in the second phase were to focus on the remainder of the application and were filed by CURB, MCIW, AT&T, Sprint, Birch, Adelphia Business Solutions Inc. of Kansas (Adelphia), IP Communications Corporation (IP), and KMC Telecom II, Inc. (KMC). SWBT filed a response to both sets of comments.

Staff conducted an exhaustive review of SWBT's draft § 271 application, the parties' comments and SWBT's reply comments. Staff's review included multiple meetings with SWBT to address concerns with the application. As a result of these meetings, numerous modifications were made to the K2A. The K2A includes the performance plan and the performance remedy plan. Although modeled after the T2A, the K2A has been updated to include specific Kansas terms, to reflect decisions of this Commission, and to incorporate FCC decisions issued after SWBT filed its Texas application.

Staff filed one set of comments: the Kansas Corporation Commission Staff's 271 Report on August 21, 2000 (Staff's Report). In this Report, Staff reviewed SWBT's compliance with § 271(c)(1)(A), with the 14 checklist items in § 271(c)(2)(B), and with the separate affiliate requirements of § 272. The report also reviewed the public interest finding the FCC must make under § 271(d)(3)(C) and the performance measures and performance remedy plan proposed by SWBT. Although recognizing several areas of continuing concern, Staff concluded SWBT had met its obligations under § 271. The following parties filed comments on Staff's report: Sprint, IP, the Association of Communications Enterprises, Birch, MCIW, CURB, AT&T, and KMC.

On September 19, 2000, Birch filed a Notice of Change of Position and Withdrawal from Case. Birch is the largest competitive local exchange carrier in Kansas. In its Notice, Birch stated it had settled with SWBT concerning the issues it raised and, with these issues resolved, recommended the Commission approve SWBT's application.

The Commission held an Administrative Meeting on September 20, 2000, at which it reviewed the report filed by Staff and asked for additional information. Staff was directed to file an addendum to its report containing current performance data and addressing steps taken to resolve problems described in the comments of competitive LECs. Also, the Commission asked

Staff to provide additional information about performance measures and to propose an expedited dispute resolution plan before the next Administrative Meeting.

Staff filed a proposed expedited dispute resolution process on September 22, 2000. On the same day, SWBT also filed a proposed expedited dispute resolution process, which is supported by Birch. Staff filed an Addendum to its report on September 27 and on September 28, 2000. Comments were filed on October 2, 2000, by CURB, AT&T, IP, MCIW, and KMC. Furthermore, on September 27, 2000, a letter from Robert Flappan, Director of Regulatory Affairs, AT&T, was filed expressing concern that the Commission did not hold evidentiary hearings about SWBT's § 271 Application. Both SWBT and Staff filed a response to this letter.

An Administrative Meeting was held October 6, 2000. At the hearing the Commissioners discussed the letter from Mr. Flappan, SWBT's § 271 Application, and a proposed expedited dispute resolution process for use in telecommunications cases. Concerning the letter from Mr. Flappan, the Commission recognized his concerns but concluded its decision not to conduct a hearing was not fatal to this proceeding. The Commission found the proceeding was fair due to the continuing opportunity for all carriers to provide input and participate in this proceeding. The Commission denied SWBT's request not to include Mr. Flappan's letter in the record and ordered that it be included as part of the report to the FCC. Regarding SWBT's § 271 Application, the Commission concluded the K2A met the 14 checklist items of § 271, but, as discussed in more detail in this report, the Commission determined its Staff should continue to closely monitor SWBT's performance and SWBT's assurances that it would correct concerns expressed by competitive LECs. The Commission concluded an expedited dispute resolution process was necessary and directed Staff and Advisory Counsel to proceed with adoption of an appropriate procedure.

At the close of the Administrative meeting, the Commission directed SWBT to file a revised version of the K2A that included all modifications agreed to during SWBT's negotiations with Staff. SWBT filed its final K2A on October 9, 2000. Since then several parties have opted to accept the K2A and orders have been issued approving these. Attachments 1 through 4. Also, after Staff became aware the K2A provisions on line sharing did not include the most recent interim rates, these corrections were filed. Attachments 5 and 6.

After the Administrative Meeting, SWBT advised Staff an error had occurred in calculating performance measurements. When correcting the calculations, it became evident to Staff that SWBT's level of performance had declined a small amount. Given this information and the additional month of data included by SWBT in its FCC filing, the Commission has updated its references to performance measures contained in this report.

On October 24, 2000, Ionex Communications, Inc., filed a Motion to Stay Further Proceedings with Respect to SWBT's § 271 Application, attaching a copy of a Complaint. Attachment 7. On November 3, 2000, SWBT filed its Response to the Motion, Attachment 8, and Ionex filed a Reply on November 9, 2000. Attachment 9. At the same time it filed the

Motion, Ionex separately filed its Complaint against SWBT regarding rates charged pursuant to interconnection agreements, Docket No. 01-SWBT-344-COM. Attachment 10. SWBT filed its Response to the Complaint on November 13, 2000. Attachment 11. The Commission has reviewed the pleadings and concludes that the Ionex Complaint arises out of disagreement over the relationship between and interpretation of several interconnection agreements. The Complaint will be addressed in Docket No. 01-SWBT-344-COM. The Commission finds that the Motion to Stay does not raise issues that affect SWBT's § 271 Application and will shortly issue an order denying the Motion to Stay.

III. COMPLIANCE WITH § 271(c)(1)(A): TRACK A

SWBT filed its application under 47 U.S.C. § 271(c)(1)(A), Track A. To qualify for Track A, SWBT must demonstrate that (1) it has entered into a binding interconnection agreement with one or more competitive LECs that has been approved by the Commission; (2) the agreements specify terms and conditions under which SWBT is providing access and interconnection to its network facilities for network facilities of one or more unaffiliated competitive LECs; (3) local telephone exchange service is being provided to residential and business subscribers by one or more unaffiliated competitive LECs; and (4) the competitive LEC-provided local exchange service is provided exclusively over the competitive LEC's own facilities or predominantly over its own facilities in combination with resale. 47 U.S.C. § 271(c)(1)(A). When a BOC relies upon more than one competing provider to satisfy Track A, each carrier need not provide services to both residential and business customers. *Texas Order*, ¶ 59.

As of July 2000, the Commission had approved 103 interconnection/resale agreements. Nine facilities-based and 23 to 29 resale providers offer service in Kansas. As of June 2000, Kansas had approximately 31,000 facilities-based competitive LEC access lines and 98,000 competitive LEC resale lines. Of the 31,000 facilities-based competitive LEC access lines, the data indicates only five are residential lines. Although these numbers differ from those submitted by SWBT, Staff believes the difference is insignificant for purposes of § 271 compliance evaluation. Staff's Report, 1-3.¹

AT&T expressed concern SWBT is overstating the level of competition in Kansas by using faulty assumptions about access line losses that dramatically skew the estimates. CURB expressed concern that competition is still in its infancy in Kansas because Kansas has not yet developed an effectively competitive market for providing local exchange telephone services in any portion of the state. Staff's Report, 2. While a simple market share analysis might lead one to believe little competition is present in Kansas, Staff's Report, 2, the FCC has stated it may

¹All citations to "Staff's Report" are to page numbers in Section 1 of the Report, which begins after the Introduction.

consider competitive conditions or geographic penetration as part of its inquiry into the public interest aspect under § 271(d)(3)(C). *Ameritech Michigan Order*, ¶ 79.

The Commission concludes SWBT has demonstrated (1) it has entered into a binding interconnection agreement with one or more competitive LECs that has been approved by the Commission; (2) it provides access and interconnection to one or more competitive LECs not affiliated with SWBT; (3) local telephone exchange service is provided by one or more unaffiliated competitive LECs to residential and business subscribers; and (4) competitive LEC-provided local exchange service is provided exclusively over the competitive LEC's own facilities or predominantly over its own facilities in combination with resale. Although the record reflects a de minimis amount of facility-based residential service, SWBT appears to meet the requirements of Track A.

IV. CHECKLIST COMPLIANCE

The Commission has reviewed the record concerning each checklist item SWBT must satisfy to show compliance with § 271. This report will discuss each of the 14 checklist items separately.

A. Checklist Item 1 – Interconnection

Interconnection refers to the physical linking of facilities and equipment of communications networks for the mutual exchange of traffic. Under checklist item 1, SWBT must provide interconnection as required by sections 251(c)(2) and 252(d)(1) of the Federal Act. 47 U.S.C. § 271(c)(2)(B)(i). Under § 251(c)(2), SWBT must provide any requesting telecommunications carrier (A) transmission and routing of telephone exchange service and exchange access (B) at any technically feasible point in the network (C) that is at least equal in quality to what SWBT provides itself, its affiliate, or any other carrier (D) at rates, terms and conditions which are just, reasonable, and nondiscriminatory under § 252(d)(1). 47 U.S.C. § 251(c)(2). A State commission's determination of just and reasonable rates for interconnection (A) shall be (i) based on the cost of providing the interconnection, without reference to a rate-of-return or other rate-based proceeding, and (ii) nondiscriminatory, and (B) may include a reasonable profit. 47 U.S.C. § 252(d)(1). Staff's Report provides further summary of the applicable law. Staff's Report, 4-5.

According to SWBT, it offers five methods of interconnection and other technically feasible alternatives. These methods are defined by Staff in its Report. Staff's Report, 5-6. SWBT uses a forecasting process to determine the amount of traffic each central office will handle and the number of trunks required to carry traffic for the forecast period, normally 5 years. SWBT uses an industry standard objective for trunk forecasting and servicing of 2% overall blocking. Twice a year competitive LECs are asked to provide forecast information, which is incorporated in the General Trunk Forecast published twice a year. Staff's Report, 6.

Witnesses for AT&T and Sprint described various deficiencies in SWBT's interconnection policies. Also, AT&T challenged the number of interconnection trunks installed as reported by SWBT. AT&T expressed concern regarding the inconsistency in performance measures, especially PM 78 data and PM 73 data. Staff's Report, 6. July through August 2000 data for PM 78 is not available; for PM 73, SWBT was in parity. SWBT's Joint Application with the FCC, Sept. Performance Joint Affidavit (Sept. Perf. Jt. Affid.), Attachment B.

Based upon SWBT's response to these concerns by AT&T and Sprint, Staff concluded SWBT offers terms and conditions sufficient to satisfy its interconnection obligations through its methods of interconnection. SWBT proposed a modification to K2A that includes an option for a single point of interconnection within a LATA, which should assure the ability of a competitive LEC to obtain interconnection at any technically feasible single point of interconnection. According to Staff, this amendment brings SWBT into compliance with the interconnection requirements clarified in the *Texas Order*. *Texas Order*, ¶ 78. Staff found SWBT's testimony responding to concerns expressed by AT&T and Sprint persuasive. Regarding performance data, Staff noted the degree of compliance varies by individual component and by month, but Staff concluded SWBT's overall performance is satisfactory. Staff's Report, 8. SWBT's overall compliance rate for Kansas interconnection performance measures for July through September 2000 was 100%. Sept. Perf. Jt. Affid., Attachment F-1. However, for many of the measurements, no data was reported.

1. Collocation.

SWBT offers several arrangements of physical and virtual collocation for interconnection. SWBT filed tariffs for physical collocation and virtual collocation in Docket No. 00-SWBT-733-TAR, which is pending before the Commission. In this docket, an agreement was reached for the terms and conditions for each type of collocation. Interim rates were set in an Order issued April 21, 2000. Final rates for provisioning collocation will be decided following the hearing set for November 28-29, 2000. Staff's Report, 8.

Alternatively, a competitive LEC may obtain collocation by negotiating terms and conditions for collocation within its interconnection agreement. Staff describes in its report the number and type of collocation arrangements completed in Kansas. Staff's Report, 9.

Sprint wanted a remote collocation arrangement for sub-loop access, which SWBT has not developed. Sprint has had trouble obtaining information from SWBT needed to determine the most desirable location of remote terminals for placing equipment. Staff's Report, 9. Regarding Sprint's problems, Staff cautions that SWBT should not be permitted to thwart a competitive LEC's attempts to collocate at a remote location to further the objectives of Project Pronto. Through Project Pronto, SWBT's affiliate, Advanced Solutions, Inc. (ASI), is deploying fiber optic cable to provide advanced services. Many issues relating to Project Pronto will be addressed in the generic docket on digital subscriber line issues, Docket No. 01-GIMT-032-GIT. Staff suggests problems with the collocation process be addressed during the six month review of

the terms and conditions of the collocation tariffs as provided for in the stipulation and agreement reached in Docket No. 00-SWBT-733-TAR. Staff's Report, 10.

In the *Texas Order*, the FCC found SWBT's Texas collocation tariffs, which are very similar to those in Kansas, satisfied sections 271 and 251 of the Federal Act. Also, the FCC found three collocation performance measures were adequate for determining if SWBT's collocation offering is nondiscriminatory. *Texas Order*, ¶¶ 73-75. Incorporated in SWBT's collocation tariffs is a 10-day notification period, which the FCC has found to be a reasonable time in which to notify a competitive LEC that its application for collocation has been accepted or denied. Staff's Report, 9. AT&T expressed concern about the accuracy of SWBT's performance data for PM 107; SWBT responded that the referenced data was not included in AT&T's and TCG's reports, but was included in the aggregate data. Staff's Report, 10.

2. Rates for Interconnection.

Rates for the various components of interconnection were established by the Commission in Docket No. 97-SCCC-149-GI based on TELRIC. SWBT's cost studies and proposed input values were evaluated by all parties. The Commission received testimony, conducted a hearing, and considered comments in setting the rates. Recurring UNE rates have been in place since February 19, 1999. Non-recurring rates were interim, subject to true-up, until the Commission's final order filed November 3, 2000. Attachment 12.

Staff pointed out use of interim rates is appropriate if temporary and if uncertainty is limited, as it is in Kansas. The FCC has determined interim rates alone do not impair approval of a section 271 application and will be reviewed on a case-by-case basis. If uncertainties caused by use of interim rates can be minimized, then the FCC has indicated it may be appropriate to approve an application based on interim rates. *Texas Order*, ¶¶ 85-90; *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 (Released December 22, 1999) (*New York Order*), ¶ 258.

Conclusion: This Commission still must decide important collocation issues, such as the ability of competitive LECs to collocate at remote terminals. Assuming SWBT will abide by this Commission's decision on collocation, the Commission concludes SWBT has complied with the requirements of interconnection under checklist item 1. The Commission concludes SWBT's collocation offerings and rates for interconnection meet the requirements imposed by the Act.

B. Checklist Item 2 – Nondiscriminatory Access to Network Elements

Section 271(c)(2)(B)(ii) requires SWBT to provide nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1). Under its duty

to assure access to unbundled network elements (UNEs) requested by a telecommunications carrier, SWBT must provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point. The rates, terms, and conditions must be just, reasonable, and nondiscriminatory in accordance with the terms and conditions of sections 251 and 252, and SWBT must allow requesting carriers to combine UNEs to provide telecommunications service. 47 U.S.C. § 251(c)(3). Section 252(d)(1) sets out pricing standards for network element charges. Just and reasonable rates for network elements must be (i) based on the cost of providing the network element without reference to rate-based proceedings, and (ii) nondiscriminatory, and the rates may include a profit. 47 U.S.C. § 252(d)(1).

The FCC has required incumbent LECs to provide unbundled access to several network elements, including local loops, network interface devices, local and tandem switching capability, interoffice transmission facilities, signaling and call-related databases, operations support systems functions, and operator services and directory assistance facilities. *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325 (Released August 8, 1996) (*Local Competition Order*), ¶ 366. This list is a minimum set of elements an incumbent LEC must unbundle. State commissions may prescribe additional elements, and parties may agree on additional network elements in the voluntary negotiation process. *Local Competition Order*, ¶ 366.

This checklist item encompasses whether SWBT provides nondiscriminatory access to operational support systems (OSS) and to combinations of UNEs in accordance with section 251(c)(3) and FCC rules. The duty to provide nondiscriminatory access to OSS functions is embodied in other competitive checklist items as well. UNEs other than OSS are listed separately in other competitive checklist items. *Texas Order*, ¶ 91.

1. Operational Support Systems

OSS functions include the processes, procedures and systems relating to preordering, ordering, provisioning, maintenance and repair, and billing. These systems determine to a large extent the speed and efficiency with which incumbent LECs can market, order, provision, and maintain telecommunications services and facilities. *Line Sharing Order*, ¶ 516. OSS functions include computer systems, databases, and personnel the incumbent LECs use to discharge, direct, and coordinate many internal functions necessary to provide service to customers. A competing carrier needs access to the same OSS functions, including relevant databases, computer systems and personnel, to sign up customers, place an order for services or facilities with the incumbent, track progress of the order to completion, receive relevant billing information from the incumbent and obtain prompt repair and maintenance services for its customers. *Local Competition Order*, ¶¶ 518, 522-23. The FCC has concluded nondiscriminatory access to OSS is a prerequisite to the development of meaningful local competition. To meet this checklist item, SWBT must offer OSS to support all three methods of competitive LEC entry, which are “competitor-owned facilities, unbundled network elements and resale.” *Texas Order*, ¶ 94.

The FCC has noted it takes a two-step approach in determining whether SWBT has met the nondiscrimination standard for each OSS function. First, the FCC determines whether SWBT has deployed necessary systems and personnel to provide sufficient access to each necessary OSS function and provided adequate assistance to competing carriers in understanding how to implement and use all available OSS functions. *Texas Order*, ¶ 96. Under this inquiry, SWBT must show it has sufficient electronic and manual interfaces to permit competitive LECs equivalent access to necessary OSS functions. Also, SWBT must disclose internal business rules or formatting information needed to ensure a carrier's requests and orders are processed efficiently. Finally, SWBT must demonstrate its OSS functions are designed to accommodate current and projected demand for competitive LECs to fully access OSS functions. *Texas Order*, ¶ 97.

The second step is to assess whether the OSS functions deployed by SWBT are operationally ready, as a practical matter. *Texas Order*, ¶ 96. Under the second inquiry, the FCC examines performance measurements and other evidence of commercial readiness to see how SWBT is handling current demand and to determine whether SWBT will be able to handle reasonably foreseeable future volumes. Actual commercial usage is the most probative evidence that OSS functions are operationally ready, but without such evidence the FCC considers the results of carrier-to-carrier testing, independent third-party testing, and internal testing. *Texas Order*, ¶ 98.

a. Need for OSS Testing

The FCC does not require OSS testing, but a well designed test may provide an objective measure to evaluate an incumbent's readiness where little or no evidence of commercial usage is present. The weight the FCC gives a third-party review depends upon the qualifications, experience and independence of the third party and the conditions and scope used in the review. *Texas Order*, ¶ 98. The Texas Commission retained Telcordia to oversee a carrier-to-carrier test of the operational readiness of SWBT's OSS functions and to evaluate the effectiveness of the documentation and other processes available to competitive LECs in Texas. *Texas Order*, ¶ 101. The FCC applauded the Texas Commission for its role in developing the Telcordia test, *Texas Order*, ¶ 101, but it recognized the test was limited in scope and depth. *Texas Order*, ¶ 103.

At a Technical Conference on June 21, 2000, Staff heard presentations about whether this Commission should undertake an independent investigation in Kansas of SWBT's OSS. Staff summarized the presentations made by witnesses on behalf of SWBT and the competitive LECs in its Report. Staff's Report, 15-17. SWBT argued OSS functions are common throughout its five-state region, including Texas, Oklahoma, Kansas, Missouri, and Arkansas. A carrier-to-carrier test was performed on SWBT's OSS in Texas because several systems did not have commercial volumes. Since this initial OSS test, SWBT reported all OSS interfaces have achieved commercial volumes in Texas. The OSS interfaces offered to competitive LECs are the same ones used by SWBT, except when a competitive LEC orders unbundled network element platform, or UNE-P. Staff's Report, 15.

Competitive LECs expressed the following concerns at the Technical Conference and in their Comments: (1) because of express disclaimers with the Telcordia test, this Commission should not rely upon it; (2) the Telcordia test was not specific to Kansas; (3) direct performance of SWBT OSS interfaces vary from location to location and are not region-wide; (4) the Telcordia test was less comprehensive than the third-party testing used in New York; (5) the Telcordia test is unreliable for a Kansas-specific situation without significant commercial volume; (6) a competitive LEC in Kansas has to deal with numerous SWBT personnel when OSS problems arise; (7) SWBT's OSS functions cannot handle manual orders from small competitive LECs; and (8) a significant number of errors occur in automated ordering causing orders to "fall out" for manual handling. Staff's Report, 15-16. SWBT asserts these complaints and arguments do not support additional OSS testing, but instead relate to commercial readiness, which is monitored by performance measures and commercial usage. Staff's Report, 16.

Staff reviewed SWBT's OSS in detail. According to Staff's Report, in SWBT's five-state region, the same system performs the vast majority of OSS functions for all competitive LEC customers, regardless of the location of the customer. Soon after the June 21, 2000, Technical Conference, the FCC approved SWBT's § 271 Texas application. Staff considered the FCC's *Texas Order* when analyzing whether to recommend third-party OSS testing in Kansas. Staff's Report, 18. The FCC largely relied on commercial volumes. To the extent the OSS functions are the same for the five-state region, commercial volumes originating from any one state or an aggregate of the five states can demonstrate OSS readiness. The FCC determined SWBT's OSS offering meets the requirements of § 271. *Texas Order*, ¶ 99. Staff suggested the only reason to require further testing in Kansas would be if (1) this Commission determined SWBT's OSS systems are not region-wide, or (2) additional functions were added to SWBT's OSS since the FCC's approval in Texas and commercial volumes are lacking for those functions. Staff's Report, 18.

Staff explained OSS testing can provide additional support for § 271 compliance when performance measurements and data for commercial volumes are not available. Although recognizing not all activities are captured in the current version of the performance measures, Staff suggested the continuing six-month review allows the opportunity to modify the performance measures. Staff pointed out the performance measures were modified as a result of the last six-month review in Texas. Some new performance measures were added, while other existing performance measures were modified or deleted entirely. Staff's Report, 18. These changes are incorporated in the performance plan contained in the K2A.

Staff specifically asked for comments on whether unique Kansas OSS issues required testing. Staff concluded the comments focused on performance measurements or deficiencies of the Telcordia OSS test rather than the need for Kansas-specific OSS testing. Staff concluded OSS testing is not necessary because commercial volumes are available in the five-state area and because the competitive LEC comments address performance measurement results. However, Staff noted concern about lack of OSS testing for line sharing OSS functions. Staff's Report, 18.

The scalability of SWBT's OSS is an additional issue. SWBT must be able to process increased volumes of orders for the five-state region through its OSS. Staff requested additional information from SWBT regarding scalability of SWBT's OSS; furthermore, Telcordia recently filed a report on the scalability of SWBT's OSS. The information SWBT provided is consistent with Telcordia's report. Staff's Report, 19-20. Staff concluded SWBT has adequate processes in place to address increased volumes. Staff concluded OSS testing is not necessary. Furthermore, Staff suggested that SWBT's experience in responding to increased volumes without a significant degradation in performance supports Staff's conclusion that SWBT's processes are adequate. Staff's Report, 20.

b. Competitive LECs' Access to OSS

Staff's Report described affidavits SWBT submitted to establish it provides competitive LECs with nondiscriminatory access to OSS processes, procedures, and systems. SWBT affidavits describe how competitive LECs may directly access SWBT's own systems, as well as SWBT-developed systems that are dedicated exclusively to processing competitive LEC transactions. SWBT has afforded competitive LECs trial periods during which no access or connectivity charges apply. Also, as part of the merger conditions between SBC Communications and Ameritech, SWBT waived access and connectivity charges to its OSS to all competitive LECs for three years. Staff's Report, 21. Staff reviewed SWBT's statements regarding (1) pre-ordering, (2) ordering/provisioning, (3) maintenance and repair, (4) billing, and (5) change management, Staff's Report, 21-24, and concluded SWBT offers competitive LECs access to its OSS in the K2A. Staff's Report, 25.

Telecommunications Resellers Association asked SWBT to offer a web-based OSS access. According to Staff, SWBT provides competitive LECs access to systems to perform OSS functions in substantially the same time and manner as it utilizes for itself. This includes industry-standard machine-to-machine interfaces, manual interfaces, and Windows-based graphical user interfaces (GUI). Development of web-based GUI access was the subject of collaborative meetings taking place in connection with the SBC/Ameritech merger. Staff's Report, 25.

c. Change Management Process

Several parties commented about change management. Details of SWBT's change management process are available on its competitive LEC website, with additional e-mail notification in some circumstances. Staff's Report, 26. AT&T complained SWBT overuses the exceptions process to deviate from the standard timelines for requirements publications. AT&T contended that when implementing a new release, SWBT's methods and procedures training, internal testing, and control are inadequate. Furthermore, SWBT is slow to resolve or to communicate with competitive LECs about problems with introduction of the release. Staff's Report, 26. As a specific example, AT&T cited SWBT's error in updating tables, which provisioned AT&T's UNE-Platform Purchase Order Numbers with an invalid circuit identifier. Staff's Report, 26-27.

The FCC found SWBT's change management process in Texas provides an efficient competitor a meaningful opportunity to compete. SWBT's change management process accommodates five types of changes: emergency, regulatory, industry standards, SWBT initiated, and competitive LEC requested. The FCC concluded SWBT's overall record demonstrates a testing environment that is stable, adequately mirrors production environment, affords an opportunity to develop representative pre-ordering and ordering transactions, and offers extended testing periods. *Texas Order*, ¶ 110. According to Staff, recent updates should eliminate the requirement to populate the end user's address on the UNE-P conversion service requests, which resulted in the errors for AT&T. Although admitting these errors resulted from a SWBT database table error, SWBT asserts the problem was fixed in June, and it is continuing to work with AT&T to correct the problem. Staff's Report, 27.

Staff noted SWBT has implemented versioning to ensure system changes and enhancements do not adversely affect a carrier's ability to access SWBT's OSS. Versioning is the simultaneous support of two or more releases of a software package, which bolsters the change management process. SWBT released versioning in August 2000. Staff's Report, 27-28. Staff suggested SWBT's change management process is acceptable, particularly since introduction of versioning in August. Staff's Report, 28.

d. Preordering

The pre-ordering phase of OSS generally includes a carrier's activities to gather and verify information needed to place an order. The FCC has noted, since pre-ordering is the first exposure of a prospective customer to a competing carrier, it is crucial for a competitive LEC to be able to accomplish pre-ordering activities in a manner no less efficient and responsive than an incumbent LEC. *Texas Order*, ¶ 148. The FCC found SWBT demonstrates (1) competing carriers successfully built and use application-to-application interfaces to perform pre-ordering functions; (2) competing carriers can integrate pre-ordering and ordering interfaces; (3) SWBT's pre-ordering systems provide reasonably prompt response times; (4) these interfaces consistently afford competitors a meaningful opportunity to compete; and (5) SWBT offers nondiscriminatory access to OSS pre-ordering functions associated with determining whether a loop is capable of supporting xDSL advanced technologies. *Texas Order*, ¶ 147.

In its Report, Staff summarized the four pre-ordering electronic interfaces as well as manual processes SWBT offers competitive LECs. Staff's Report, 22. Although AT&T contended SWBT reduced the number of servers used to support another electronic interface, DataGate system, SWBT disagreed and asserted its data confirms the existing server arrangement never failed to handle the volume of incoming transactions. Staff's Report, 25. Staff found no

evidence the number of servers was reduced. After SWBT held discussions with AT&T, AT&T indicated the problems were addressed. Beth Lawson Affidavit of August 2, 2000, ¶¶ 28-30.

e. Ordering

SWBT must provide competing carriers access to its OSS ordering functions. The FCC found SWBT demonstrates it provides nondiscriminatory access to its ordering systems as required by § 271. *Texas Order*, ¶ 169. More specifically the FCC found (1) SWBT can return timely order confirmation and rejection notices; (2) SWBT's systems flow-through a high percentage of orders without manual handling, at a rate comparable overall to the flow-through rate for its retail services; (3) mechanized orders that do not flow-through are handled in a reasonably prompt and accurate manner; (4) the mechanized and manual components of SWBT's ordering systems are scalable to accommodate increasing demand; (5) SWBT provides jeopardy notices in a nondiscriminatory manner; and (6) SWBT provides timely order confirmation notices. The standard of review used by the FCC was whether SWBT's systems and performance allow an efficient carrier a meaningful opportunity to compete. *Texas Order*, ¶ 170.

(i) Order Confirmation Notices

After performing the necessary pre-ordering processes, a competitive LEC must transmit a Local Service Request, whereupon SWBT's ordering system formulates a service order. In Kansas, competitive LECs can use one of four electronic interfaces for ordering and provisioning. Staff's Report describes these interfaces. Staff's Report, 22-23.

AT&T complained that it did not receive timely firm order confirmations for approximately 70 specific Texas UNE-P orders. Staff's Report, 30. SWBT indicated these 70 orders were sent by AT&T on the same day. SWBT asserted firm order confirmations were returned on 98% of the Local Service Requests within the required five hour interval. Staff's Report, 30. Staff concluded that overall SWBT was in compliance on the relevant performance measure and that AT&T's experience was a one day occurrence. Staff encouraged AT&T to pursue resolution with Staff's assistance if the problem continues to occur. Staff's Report, 30. For June through August, SWBT reports compliance with those performance measurements reflecting order confirmation notices. SWBT's Joint Application with the FCC, William R. Dysart Affidavit of October 26, 2000 (Dysart Affid.), Attachment M.

(ii) Rejects

AT&T reported receiving reject notifications when no competitive LEC entry error occurred. According to AT&T, over 33% of UNE Loop orders in a two-day period were rejected improperly. SWBT responded that a single Local Service Center employee was involved in this incident and has received additional training along with the rest of the staff. Staff's Report, 31-32. Staff concluded SWBT has resolved this issue. Staff's Report, 32.

(iii) Flow-through Rate

Flow-through is the electronic processing to the back office systems without manual intervention. SWBT maintained its flow-through rates are acceptable. Because the flow-through rate varies with the competitive LEC, SWBT asserted the competitive LECs, not SWBT, are responsible for any poor flow-through performance. Staff's Report, 23. AT&T contended that the Electronic Data Interchange (EDI) flow-through rate for competitive LECs in the aggregate is 66.7% in Kansas while the rate is 96% on a five-state basis. Staff's Report, 30. Staff noted that although AT&T correctly stated the rate in May, the first month with Kansas-specific data, only 27 service orders were created via EDI that month in Kansas. In the prior month, SWBT's region-wide flow through rate was 96% based on 141,327 EDI service orders. Staff's Report, 30. Staff recommended SWBT's flow-through rate be reviewed again when the FCC application is filed. Staff's Report, 30.

Based on SWBT's § 271 filing with the FCC, the following chart shows PM 13-03 Order process percentage flow-through for EDI for Kansas competitive LECs compared to SWBT's Benchmark:

	# of <u>Orders</u>	<u>Percentage of Flow-through</u> Kansas SWBT			<u>Compliance</u>
		<u>CLECS</u>	<u>Benchmark</u>		
June	120	54.2%	92.0 %	No	
July	122	98.4%	91.8%		Yes
August 61		54.1%	92.0%	No	
September	Unavail.	78.1%	91.5%		No

Dysart Affid., Attachment M (July); Sept. Perf. Jt. Affid., Attachment B-2 (July through Sept.).

(iv) Jeopardy Notices

Jeopardy notices inform a competitive LEC that a service installation due date will be missed. The FCC concluded SWBT provides jeopardy notices to competing carriers in a nondiscriminatory manner. *Texas Order*, ¶ 184. AT&T alleged SWBT sent jeopardy notices for "Facility Shortage" when no facilities were involved on the migration order and UNE Loop orders were returned without a due date. SWBT responded the percentage of jeopardies was extremely low when compared to overall Local Service Requests. Staff's Report, 32. Staff concluded SWBT adequately addressed AT&T's concerns and if noncompliance was an issue, it would be reflected in the June, July, and August data. Staff's Report, 32. Two performance measures, PM 10.2 and PM 11.2, were developed for jeopardy notices in the Texas six-month review process. No data is available for Kansas.

(v) Line Information Data Base

The Line Information Data Base (LIDB) contains information needed to use calling cards and make collect calls, information used for branding operator and directory assistance calls, and customer's interLATA and intraLATA Primary Interexchange Carrier (PIC). *Texas Order*, ¶ 189. MCIW asserted SWBT does not allow competitive LECs to update their LIDB by submitting a Local Service Request, which makes it more difficult to change a customer's PIC. Staff's Report, 29. SWBT responded the end-user PIC selections are updated through the Local Service Request process when the customer is initially converted and for subsequent PIC changes. Additional update capability is being developed with competitive LEC input. Staff suggested the modifications SWBT is in the process of implementing indicates no further action is required. Staff's Report, 30. SWBT has committed to provide this functionality to competitive LECs by December 31, 2000. K2A, Attachment UNE, 9.4.4.3.3.

f. Provisioning

In Texas, the FCC found that on an overall basis SWBT provisions competing LEC customers' orders for resale and UNE-P services in substantially the same time and manner as it provisions orders for its own customers. SWBT recognized its electronic processes for provisioning UNE-P orders may falter when handling orders that contain address-related discrepancies not resolved by SWBT's front-end edits, but asserted its process for manually catching and correcting these errors is adequate to minimize service outage. The FCC found problems affecting customers are rare in Texas and concluded these process failures do not warrant finding SWBT fails to provide nondiscriminatory access to its provisioning functions. *Texas Order*, ¶ 194.

Staff discussed reports from KMC that UNE installations are not being met under its interconnection agreement, causing service delays and outages as long as eight hours. KMC contended SWBT failed to respond or inadequately responded to repeated trouble reports in several outages. Staff's Report, 28. SWBT asserted its performance measures show the due date has been met on 98.6% of the 5db circuits ordered by KMC in the last year. SWBT explained the problems resulting in KMC customers experiencing outages and described supplemental training for SWBT service representatives who were not following proper procedures. Staff's Report, 28-29. KMC and SWBT met and are attempting to work together to resolve issues that have arisen and will arise. Second Addendum, 1.

Concerning provisioning of xDSL, Staff's evaluation was hampered by low activity in Kansas. The same OSS is used in SWBT's five-state region. Staff suggested the number of observations for each measurement in Texas is considerably greater than 10 and provides a reliable indication of SWBT performance. Second Addendum, 8. Staff summarized SWBT's July and August performance in Missouri and Texas, Second Addendum, 9-10, and concluded this data suggests SWBT provides nondiscriminatory access to xDSL related services. Second Addendum, 10. Staff also summarized SWBT's July and August cutover performance. Second Addendum, 10-12. Staff concluded SWBT's performance is in compliance for all measurements with available data. Second Addendum, 12.

SWBT's current data reflects a mixed level of performance regarding SWBT's provisioning of xDSL. Dysart Affid., Attachments B and Q. While this could be merely a problem of small sample size, the Commission is concerned with SWBT's performance in this area and will continue to monitor it closely.

g. Maintenance and Repair

SWBT offers Kansas competitive LECs two electronic interfaces for maintenance and repair, which Staff described in its report. Staff's Report, 23. Either interface can be used to report troubles, request repair of resale services and unbundled network elements, and check on the status of trouble reports. Staff's Report, 24. According to Staff, SWBT provides competitive LECs the same access to repair and maintenance systems as it provides to its retail operations. Staff's Report, 23.

h. Billing

AT&T expressed several concerns about billing. AT&T asserted SWBT is not providing nondiscriminatory access to billing because the daily usage records SWBT provides AT&T for UNE-P orders contain inaccuracies. The FCC found SWBT provides competing LECs with usage data in substantially the same time and manner as it provides to itself. According to AT&T, double billing is a problem with AT&T's UNE Loop orders because SWBT delays completion of return of service orders and posting orders to back-end billing systems. SWBT recognized some overlap will usually occur when a customer switches providers. The FCC found that SWBT's processes were adequate and minimized double billing and that evidence presented to the Texas PUC was insufficient to indicate SWBT's systems process was discriminatory. Staff's Report, 33. Staff noted the potential for billing overlap will continue because the service order post date and the end user's SWBT billing date may not coincide. Staff's Report, 33. Although problems exist with billing, Staff concluded SWBT's data demonstrates its performance is adequate. Staff's Report, 34.

For the months of July through September 2000, SWBT was in compliance for all billing related PMs (14-18) except for PM 17-01 (Billing Completeness). SWBT was not in parity for any of the three months for PM 17-01. Sept. Perf. Jt. Affid., Attachment B-2.

i. OSS Performance Measures

In its report, Staff detailed the performance measurements used to consider SWBT's ability to provide the following services in a non-discriminatory manner: (1) Pre-Ordering/Ordering; (2) Billing; (3) Miscellaneous Administration; (4) Provisioning; and (5) Maintenance. Staff's Report, 34-37. Staff noted the overall performance data shows SWBT is in compliance on the majority of performance measures relevant to OSS. The updated overall performance data for July through September 2000 shows SWBT is in compliance with 80.3% of

the measures. Sept. Perf. Jt. Affid., Attachment J. Staff has recognized a competitive LEC may have a valid concern or problem not captured in the performance data. Staff urged competitive LECs to seek Commission assistance, even on an informal basis, when a problem is not resolved swiftly. Staff's Report, 37. At the first Administrative Meeting, the Commission directed Staff to provide an update about whether OSS problems experienced by KMC, Adelphia and Birch have been resolved. SWBT subsequently conducted meetings with KMC, Birch, and Adelphia. Birch has resolved its problems and now supports SWBT's application. KMC is satisfied that SWBT is attempting to resolve its problems. Second Addendum, 1.

After its meeting with SWBT, Adelphia still expressed concern about SWBT's provisioning systems and processes, as evident in the Declaration by Brian M. Lippold, Adelphia, filed September 28, 2000. In its Second Addendum filed September 28, 2000, Staff noted a misunderstanding continues between Adelphia and SWBT on whether data must be reconciled. If Adelphia wishes to pursue this matter further, Staff suggested Adelphia file a formal complaint with evidence to support its data. Second Addendum, 2. Adelphia has not sought further assistance from Staff. Staff noted performance data does not always adequately reflect the seriousness of a company's problems, which reinforces the importance of active participation by competitive LECs and Staff in the six-month review of the performance measures conducted by the Texas PUC. Second Addendum, 2. Staff should participate in the review process offered by the Texas PUC and also should conduct any review it believes necessary to assure appropriate OSS performance measures for Kansas. While troubled by the problems and lack of reconciled data, Staff concluded the information in Adelphia's filings should not prevent approval of SWBT's § 271 application.

An incumbent LEC has to plead evidence to support a prima facie case that it meets the requirements of the § 271 checklist items. *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 98-121, Memorandum Opinion and Order, FCC 98-271 (Released October 13, 1998) (*Louisiana Order*), ¶ 52. Opponents to the application must produce sufficient evidence to shift the burden of production back to SWBT. *Louisiana Order*, ¶ 53. Staff concluded SWBT's commitments to Adelphia must be fulfilled, which includes improvement of communications between the two companies. However, Staff concluded Adelphia's complaints do not provide sufficient evidence to shift the burden of production back to SWBT on checklist item 2. Second Addendum, 2.

2. UNE Combinations and Enhanced Extended Loop

SWBT cannot separate UNEs that are already combined to provide a service in its network. *Texas Order*, ¶ 220. SWBT has agreed to combine network elements not currently combined, including new loop to switch port, or UNE-P, and under certain conditions loop to interoffice transport combinations, or the Enhanced Extended Loop (EEL). Staff's Report, 38.

a. Combinations

Competitive LECs can combine elements for themselves through collocation or the secured frame option. The network is extended to a competitive LEC point of access by cross connections. AT&T and MCIW expressed concern that under the terms of the K2A, SWBT will stop combining elements for new competitive LECs when a central office is already providing network elements for four or more competitive LECs. Staff's Report, 38. SWBT responded that collocation is confused with the secured frame option. According to SWBT, because a competitive LEC places no equipment for interconnection or access to UNEs at the premises of the incumbent LEC, the secured frame option is not collocation. Intermediate points of interconnection are permitted when collocation is not available. The secured frame room is provided at no cost to the competitive LEC. Staff's Report, 38.

Three competitive LECs criticized the K2A provision that requires competitive LECs to combine UNEs at a shared frame, rather than through direct access to the main distributing frame. Staff's Report, 38. Staff concluded providing the secured frame option is a legitimate method for allowing competitive LECs to combine UNEs. Under the K2A, SWBT will provide new UNE combinations for at least two years for residential customers and three years for business customers. If SWBT does not provide new combinations for competitive LECs, SWBT will make the secured frame option available at no charge to allow the competitive LEC to combine the UNEs. Staff's Report, 39.

b. Access to Enhanced Extended Loop

Under the K2A, SWBT has committed to providing loop to interoffice transport combinations, referred to as the Enhanced Extended Loop (EEL). Competitive LECs can utilize four-wire digital loops for circuit switching only. Birch and MCIW criticized SWBT for restricting availability of EELs while SWBT uses the same type of loop to provide voice over data to its own customers. Staff's Report, 40. Birch has withdrawn its complaints and now supports SWBT's application. SWBT responded that the FCC has not defined an EEL as a UNE. In its decision on SWBT's Texas application, the FCC noted SWBT was complying with FCC's prior order that incumbent LECs have no statutory obligation to provide the EEL solely or primarily for use in the exchange access market unless and until the FCC imposes such an obligation. *Texas Order*, ¶ 226, 228. SWBT has committed to connect the loops to the dedicated transport of another SWBT central office or to a competitor's switch. The splitter is part of the packet switching element, not the loop. The FCC does not require providing access to the packet switching element. Staff's Report, 40. Staff concluded SWBT is providing EELs in compliance with current FCC rules and orders. Staff's Report, 40.

c. Intellectual Property Rights for UNEs

In response to a recent FCC order, SWBT revised language in the K2A regarding intellectual property rights for UNEs. Staff concluded that these changes to the K2A are consistent with the FCC's Order. SWBT has committed to using its best efforts to obtain

intellectual property rights to allow the competitive LECs to use the UNE in any manner that SWBT is allowed to use the UNE. SWBT is not obligated to indemnify competitive LECs for the cost of obtaining the intellectual property rights; instead these costs may be included in the cost of the UNE and will be apportioned to all carriers that use the UNE, including SWBT. Staff's Report, 40-41.

3. Pricing of Network Elements

The Commission established prices for interconnection and unbundled network elements in Docket No. 97-SCCC-149-GIT. SWBT filed forward-looking TELRIC studies, which were reviewed extensively by Staff, AT&T and CURB. AT&T filed its own TELRIC studies for many UNEs. After the Commission made numerous modifications to SWBT's study factors, SWBT reran its studies. The Commission issued an order on February 19, 1999, setting recurring rates. The parties were allowed to file additional studies and comments on nonrecurring rates, while interim rates were used. Staff's Report, 41. The Commission issued an order setting nonrecurring rates on November 3, 2000.

In accordance with the SBC/Ameritech merger, SWBT makes available various discounts off the rates approved by the Kansas Commission. Staff summarized these discounts available to competitive LECs. Staff's Report, 41. Staff's Report quotes at length from the SBC/Ameritech merger order that sets out resale discounts offered competitive LECs. Staff's Report, 42-43.

Conclusion: At the first Administrative Hearing, the Commission expressed concern about the allegations made by competitive LECs regarding SWBT's OSS systems. Although SWBT's performance measurements seemed to improve in more recent months, the Commission asked that data be updated. In its Addendum, Staff included spreadsheets that detail data for June, July and August. Staff noted that of the incidents of noncompliant behavior, eight were based on calculations with less than ten observations. If results of those eight measurements having no data or less than ten observations are excluded, in August SWBT achieved compliance on 83.3% of the performance measures associated with checklist item 2. Second Addendum, 4. The overall compliance rate for this checklist item in Kansas for July through September was 80.3%. Sept. Perf. Jt. Affid., Attachment J.

The Commission accepts Staff's recommendation and concludes SWBT has established it provides network elements in a nondiscriminatory manner and finds SWBT in compliance with checklist item 2. However, such conclusion relies heavily on this Commission's ability to modify the performance measures and penalties, if necessary, to assure that SWBT continues to improve its performance in this area. Both Staff and competitive LECs need to be actively involved in the six-month reviews of performance measurements conducted by the Texas PUC. This Commission applauds the initiative taken by the Texas PUC to develop this review process. Staff should participate in the Texas process to determine what proposed changes should be applied to Kansas. In addition, Staff should advise the Commission if additional performance measures need to be developed for Kansas-specific problems. Furthermore, competitive LECs are encouraged to seek

assistance from Staff, either informally or through Commission complaint procedures, if a carrier and SWBT cannot resolve a problem involving provisioning of network elements.

C. Checklist Item 3 – Poles, Ducts, Conduits, and Rights of Way

Section 271(c)(2)(B)(iii) of the Federal Act requires SWBT to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way it owns or controls at just and reasonable rates in accordance with the requirements of 47 U.S.C. § 224. Similarly, § 251(b)(4) requires SWBT to provide nondiscriminatory access to poles, ducts, conduits, and rights-of-way for competing providers of telecommunications services as required in 47 U.S.C. § 224. Therefore, to comply with checklist item 3, SWBT must show competing providers can obtain access to its poles, ducts, conduits, and rights-of-way within reasonable time frames and on reasonable terms and conditions, with a minimum of administrative costs, and consistent with fair and efficient practices. Staff's Report, 44.

A state can choose to exercise its regulatory authority over pole attachments by issuing rules and regulations. 47 U.S.C. § 224(c). Because Kansas has not elected to regulate poles, ducts, conduits, and rights-of-way, the FCC retains jurisdiction. Staff's Report, 44. SWBT's pole attachment practices and procedures are based primarily on the Pole Attachment Act and FCC orders.

SWBT has developed a Master Agreement for access to poles, ducts, conduits, and rights-of-way, which is available to any cable television provider or telecommunications carrier. The Master Agreement, which contains rules, terms and conditions consistent with § 224 and FCC orders, can be executed as a stand-alone agreement or as an appendix to an interconnection agreement. Staff's Report, 45.

Staff's Report described competitive LEC applications processed by SWBT in Kansas for space under the Master Agreement. Staff's Report, 45. It also discussed the performance monitoring plan for this checklist item. Staff's Report, 46. This Commission previously found SWBT had presented evidence to establish nondiscriminatory access to poles, ducts, conduits, and rights-of-way through its Master Agreement. Interim Report, 17. No party challenged SWBT's compliance with this checklist item. In its filing with the FCC, SWBT indicated no requests were filed under this checklist item. Sept. Perf. Jt. Affid, Attachment F-1.

Conclusion: The Commission concludes SWBT has demonstrated it is currently in compliance with checklist item 3, and a performance monitoring plan has been developed to provide comparative data for monitoring SWBT's future compliance.

D. Checklist Item 4 – Unbundled Local Loops

Section 271(c)(2)(B)(iv) of the Act requires SWBT to provide or offer to provide access to “[l]ocal loop transmission from the central office to the customer’s premises, unbundled from

local switching or other services.” 47 U.S.C. § 271(c)(2)(B)(iv). Nondiscriminatory access to this network element must be in accordance with § 251(c)(3) and § 252(d)(1). This nondiscriminatory access must be “on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and requirements of [section 251] and section 252.” 47 U.S.C. § 251(c)(3). SWBT must deliver the unbundled loop to the competing carrier within a reasonable time frame, with a minimum of service disruption, and of the same quality as the loop the BOC uses to provide service to its own customers. 47 C.F.R. § 51.313(b); 47 C.F.R. § 51.311(b); *Local Competition First Report and Order*, ¶¶ 312-16.

The local loop network element is a transmission facility between a distribution frame, or its equivalent, in an incumbent LEC’s central office and an end-user’s premises. The loop is terminated at the customer’s network interconnection device or demarcation point. *Texas Order*, ¶ 246 and n. 697. This definition of loop includes different types of loops including “two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as ISDN, ADSL, HDSL, and DS-1 signals.” *Texas Order*, ¶ 246. Dark fiber and loop conditioning are among the features, functions and capabilities of the loop. *Texas Order*, ¶ 246, n. 697.

In Texas, the FCC focused on the provisioning and maintenance and repair of (1) voice grade loops provisioned both as hot cut loops and new stand-alone loops, (2) xDSL-capable loops, and (3) high capacity loops such as DS-1 loops. *Texas Order*, ¶ 250. Because loops provisioned as part of a platform are more similar to processes for provisioning and maintenance and repair used to provide resale, the FCC addressed such loops under checklist item 2. *Texas Order*, ¶ 255.

1. Voice Grade Stand Alone Loops.

SWBT offers three ways to provide UNE loops to competitive LECs. For conversion of existing loops, either the coordinated hot cut process or frame due time process is used. For a new loop, the loop is provisioned following normal installation routines. A new loop is considered as coming from the competitive LEC, not SWBT. Staff’s Report, 59.

a. Hot Cut Loop Provisioning.

SWBT provisions existing stand-alone loops to competing carriers through conversions of active loops to the carrier’s collocation space. These loop cutovers, called hot cuts, transfer an active SWBT customer’s service to a competing carrier. *Texas Order*, ¶ 255. The ability of a BOC to provision working, trouble-free loops through hot cuts is critically important. A substantial risk exists that a defective hot cut will cause customers of the competing carrier to experience service outages for more than a brief period. *Texas Order*, ¶ 256.

The two hot cut processes provided by SWBT are the fully coordinated hot cut (CHC) process and the frame due time (FDT) process. When a competitive LEC submits a service request, the order may contain a notation that it is part of a CHC or FDT based on the customer's requests. CHC orders are handled manually in SWBT's order processing center and require intensive coordination and communication between SWBT and the competing carrier during the actual cutover from SWBT to the competing carrier. *Texas Order*, ¶ 259. SWBT requires Coordinated Hot Cuts for requests (1) for migration of 20 or more UNE loops at a single end-user address, or (2) for migration to be worked with a desired frame due time outside normal installation business hours. Otherwise, both CHC and FDT hot cuts processes are equally available to competitive LECs. Migrations are scheduled on a first come, first served basis. Staff's Report, 47.

FDT hot cuts require both SWBT and the competing carrier to perform necessary work at pre-arranged times, with no communication required at the time of the hot cut. FDT orders are capable of flowing through SWBT's order processing center without manual work by SWBT's representatives. *Texas Order*, ¶ 259. The FDT order notifies the appropriate organization that the order is to be worked at a specified time. Staff detailed how either type of hot cut is requested, processed, and occurs. Staff's Report, 47-48.

During Telcordia's initial test of SWBT's OSS, Telcordia identified several issues relating to CHCs. As a result, in the retest phase, Telcordia amended the monitoring procedures to include numerous aspects of CHC not fully considered in the initial test. Telcordia concluded the same coordination problems occur between SWBT and competitive LECs that occur for SWBT's retail customers. Staff's Report, 47.

SWBT has made several CHC improvements, including a logging process to track each CHC. This log creates a record of CHC progress and can be used on a going-forward basis to reference CHC information. Staff's Report, 48. SWBT has improved the overall CHC process by developing a detailed coordinated hot cut process with AT&T Local Services. A flow chart details the description of each party's responsibility and has created a more systematic and seamless hot cut process. Kansas has benefitted from improvements made as a result of the Texas PUC's and Telcordia's reviews. Improvements include implementing ten process improvement opportunities, which benefit all competitive LECs in SWBT's five states, including Kansas. Staff's Report, 49.

The FCC discussed in detail the performance measurements developed by the Texas Commission to reconcile SWBT and competing carrier data relating to unexpected hot cut service outages. The FCC recognized reconciled data demonstrated a higher outage rate associated with the FDT hot cut process than the CHC process. SWBT has encouraged competing carriers to use the mechanized FDT process because it is less labor intensive than the CHC process. The FCC concluded competing carriers can decide if the convenience of the FDT process is outweighed by too high outage rates. The competing LEC can choose to use the CHC process if it finds the

higher incidence of competing carrier end-use customer outages unacceptable. *Texas Order*, ¶ 270-72.

Staff summarized competitive LECs comments about voice grade stand-alone loops. AT&T cited many examples of hot cut conversions by SWBT resulting in service outages and late conversion dates. AT&T stressed these outages and late service occurrences make it difficult for competitive LECs to hold customers that have been converted from SWBT services. Staff's Report, 52-53. Adelphia complained SWBT was grossly deficient in meeting cut-over dates. SWBT met with Adelphia in an attempt to reconcile the performance data of each company.

Staff reported performance measure data for coordinated conversions from July 1999 through June 2000. Staff's Report, 55-56.

b. Stand-Alone Loop Provisioning.

SWBT provides (1) 2-wire analog loops (with no more than 8 db loss), (2) 4-wire analog loops, (3) 2-wire digital loops to support Basic Rate ISDN services, (4) 4-wire digital loops to support DS1 services including Primary Rates ISDN services, and (5) DSL loops. SWBT offers a standard conditioning for 2-wire loops to reduce loss no more than 5 db. If a competitive LEC requests it under SWBT's Bona Fide Request (BFR) process, SWBT will provide additional loop types and conditioning. SWBT offers cross-connects, with or without test access points, for each type of unbundled loop. Staff's Report, 49-50. The local loop segment between the remote terminal site and the end-user's premises is provided as a distribution sub-loop. Dark fiber and 4-wire cable conditioned for DS1 are offered as UNE sub-loop elements. Dark fiber is offered under agreements that permit revocation of the competitive LEC's use upon 12 months notice by SWBT if SWBT shows it needs the dark fiber to meet its own bandwidth requirements or another competitive LEC's bandwidth requirements. Staff's Report, 50.

The K2A was modified to comply with the provisions of the *UNE Remand Order* effective February 17, 2000, which sets out items an incumbent LEC must offer. Also, a disaster recovery plan was developed to ensure competitive LECs a backup maintenance organization in case of a national or local emergency or a weather-related event. Staff's Report, 50.

A Digital Loop Carrier is offered as a UNE through the BFR process. If an Integrated Digital Loop Carrier is requested, SWBT will move the requested unbundled loop to a spare, existing pair or a universal DLC loop at no charge to the carrier. If a spare loop is not available, SWBT notifies the carrier and alternative arrangements can be requested. Staff's Report, 50-51.

Staff summarized comments by competitive LECs expressing concern about service outages caused by untimely provisioning and the accuracy and reliability of loop performance data. Staff's Report, 53-54. Staff's Addendum also discusses parties' concerns about failure to timely provision, which results in outages, and the need for improved testing. Staff believes active participation by the competitive LECs and Staff in the Texas PUC's six-month review of

performance measurements will allow revisions to existing performance measurements and development of new ones when deficiencies are identified. Second Addendum, 2.

2. xDSL-Capable Loops.

Digital Subscriber Line (DSL) refers to several technologies that send information by digital packets. DSL provisioning is subject to a variety of technical constraints, including loop length and the condition of the loop by the presence of bridge taps and load coils. Staff's Report, 51. The Commission opened a generic docket in Docket No. 01-GIMT-032-GIT to examine DSL issues, including establishment of terms and conditions for deployment of DSL as well as prices for DSL UNEs and other required elements.

Several parties contested SWBT's compliance with checklist item 4 as it relates to provisioning of DSL-Capable loops. Competitive LECs complained about inaccurate information in SWBT's Loop Qualification Database and high xDSL rates, which give a competitive advantage to SWBT's affiliate, Advanced Solutions, Inc. (ASI). Staff's Report, 54. Some parties encouraged the Commission to use interim rates for xDSL set by Texas, but SWBT urged the Commission to use rates arbitrated in Kansas. Staff's Report, 55. This Commission adopted rates arbitrated in Kansas as interim, subject to modification and true up if necessary.

Staff discussed SWBT's development of its advanced services affiliate as required by the SBC/Ameritech merger conditions. *In re Applications of AMERITECH CORP., Transferor, AND SBC COMMUNICATIONS INC., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket No. 98-141, Memorandum opinion and Order, FCC 99-279 (Released October 8, 1999). The affiliate is required to use the same processes as competitors and to pay the same rates, which ensures a level playing field. SWBT's affiliate in Kansas, ASI, is a certificated telecommunications public utility. Their agreement offers line sharing terms and conditions available to unaffiliated competitive LECs. Although SWBT's performance in relation to ASI is to be used for parity comparison, at this time the competitive LEC activity in Kansas is so limited its usefulness is unknown. Staff's Report, 61-62.

Staff expressed concern about performance measurement results on DSL in Kansas, particularly when compared with Texas and Missouri. One problem is the lack of activity in Kansas. Because SWBT received only 4 competitive LEC orders for the 12 months ending June 2000, Staff cautioned this information is not very reliable. In contrast to Texas and Missouri, where data demonstrate an acceptable level of parity performance, Kansas performance measurement results show a sharp deterioration of performance in PM 55.1-01, which measures the average installation interval for providing DSL line sharing. SWBT was in compliance (parity) with this PM for September. Sept. Perf. Jt. Affid., Attachment B. Staff concluded SWBT's parity performance will more closely align with the other states when Kansas order volumes increase. Staff recommended the Commission find SWBT in compliance with this

checklist item, but cautioned that a thorough consideration of DSL related performance measures is necessary at the six-month review period. Staff's Report, 61.

The generic proceeding in Docket No. 01-GIMT-032-GIT is intended to resolve many issues in Kansas regarding DSL. Relying upon arbitrations in Kansas between Covad and SWBT, the Commission set interim prices, subject to modification and true up if necessary based upon the results of this docket. At an initial hearing on October 27, 2000, the Commission concluded it did not have an adequate record to decide what should be designated unbundled network elements and directed the parties to clarify the issues. The competitive LECs have been directed to develop a matrix listing all elements and activities the competitive LECs want the Commission to designate as UNEs or other required elements. SWBT has been directed to respond to this list by stating whether it disputes each element or activity and whether it believes the element or activity is proprietary. This matrix is due on November 29, 2000. Simultaneous direct testimony is due December 8, 2000, and rebuttal testimony is due December 20, 2000. Cost studies for undisputed UNEs are due December 15, 2000. At a hearing, tentatively scheduled for January 8 and 9, 2001, the Commission will hear evidence about UNEs and other required elements. After the Commission has issued an order designating xDSL UNEs and other required elements, the parties will be required to develop a matrix of terms and conditions and cost studies will be filed. Then the Commission will conduct a hearing to establish terms and conditions, to set prices and to decide any remaining issues in the DSL docket. The Commission intends to finalize the DSL docket by the end of Spring 2001.

3. Line Sharing and Other Loop Related Issues.

An incumbent LEC must provide access to the high frequency portion of the loop on an unbundled basis when it provides traditional voice service on the same line. *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets Nos. 98-147 and 96-98, Third Report and Order in CC Docket no. 98-147 and Fourth Report and order in CC Docket No. 96-98, FCC 99-355 (Released December 9, 1999) (*Line Sharing Order*), ¶ 13. Several performance measurements are used to measure line sharing. After the 6-month Texas review, many of these performance measurements were revised and several new ones added. These revisions are included in the K2A. According to Staff, ASI processes line sharing Local Service Requests within the SWBT territory. ASI received no special advantage from SWBT and, like unaffiliated competitive LECs, submits Local Service Requests in commercial volumes that flow through SWBT's systems for DSL services. Staff's Report, 52.

Although no comments were received about high capacity loop performance, competitive LECs criticized the terms for provisioning line sharing in the K2A. Staff concluded this does not prevent finding compliance with § 271 on a particular checklist item. Staff's Report, 55. No line sharing activity is present in Kansas.

Conclusion: The overall compliance rate for checklist item 4 in Kansas for July through September was 88.2%. Sept. Perf. Jt. Affid., Attachment N. The Commission concludes Staff must monitor SWBT's performance measurement data and recommend revisions as necessary to assure continuing compliance with the requirements of section 271. Checklist Item 4 especially will need to be monitored due to the small amount of activity on several aspects of this checklist. The Commission accepts Staff's recommendation to find compliance with checklist item 4, but expects Staff to continue to closely monitor SWBT's performance.

E. Checklist Item 5 – Unbundled Local Transport

Under § 271(c)(2)(B)(v) of the Act, SWBT must provide or offer to provide local transport from the trunk side of a wireline local exchange carrier switch, unbundled from switching or other services. Transport can be dedicated to a particular carrier or shared by multiple carriers including the incumbent LEC. Access to network elements must be nondiscriminatory under the requirements of § 251(c)(3) and § 252(d)(1). SWBT must provide transport to a competing carrier under terms and conditions that are equal to the terms and conditions under which SWBT provisions such elements to itself. *Local Competition First Report and Order*, ¶ 315; 47 C.F.R. ¶ 51.313(b).

SWBT offers local transport unbundled from switching or other services, consistent with the FCC's and the Commission's requirements. AT&T expressed concern that a competitive LEC be allowed to use dedicated transport as a UNE when the competitive LEC provides local service until such time as the FCC, or a court, issues a new rule or order that is inconsistent with this Commission's September 30, 1999, order in Docket No. 97-AT&T-290-ARB. SWBT agreed to change the language of the K2A to allow this. Staff concluded the performance measures for transport demonstrate SWBT is in parity and SWBT has met its obligations under this checklist item by provisioning local transport, unbundled from switching or other services. Staff's Report, 64. The overall compliance rate for this checklist item in Kansas for July through September was 85.0%. Sept. Perf. Jt. Affid., Attachment P.

Conclusion: The Commission concludes SWBT has shown it is in compliance on checklist item 5.

F. Checklist Item 6 – Unbundled Local Switching

To meet this checklist item, SWBT must provide switching unbundled from transport, local loop transmission or other services. 47 U.S.C. § 271(c)(2)(B)(vi). SWBT must show it provides nondiscriminatory access to all of the features, functions, and capabilities of the unbundled local switch. When transferring a customer's local service to a competing carrier only requires a change in software, SWBT must be able to make the transfer within the same time period it takes SWBT to transfer end users between interexchange carriers. 47 C.F.R. § 51.319(c)(1)(ii); *Local Competition Order*, ¶ 421. When unbundled local switching requires SWBT to make physical modifications to its network, SWBT must demonstrate it provisions this

element under terms and conditions no less favorable to the requesting competitive LEC than to itself. 47 C.F.R. § 51.313(b); *Local Competition Order*, ¶ 315, 421.

SWBT makes available local switching unbundled from transport, local loops, and other services by providing competitive LECs unbundled switching capability with the same features and functionality as SWBT's retail customers. SWBT furnishes more than 260 unbundled switch ports in Kansas, mostly in combination with unbundled local loops. Staff's Report, 64-65. Staff recognized virtually no data is available on the applicable performance measures, but noted no evidence was presented to show SWBT is not providing access to all the features and functions of an unbundled switch. Also, SWBT is obligated to provide unbundled local switching through interconnection agreements and the K2A. Furthermore, the K2A offers unbundled local switching at rates established in Docket No. 97-SCCC-149-GIT. Staff's Report, 65-66.

The overall compliance rate for this checklist in Kansas for July through September was 89.5%. Sept. Perf. Jt. Affid., Attachment R.

Conclusion: The Commission concludes SWBT has met the requirements of checklist item 6. Although the lack of data is a concern, the Commission intends to actively monitor SWBT's results on the performance measures and to modify the measures and penalties as necessary.

G. Checklist Item 7 – 911 and E911 Access, Directory Assistance, and Operator Services

SWBT is required to provide nondiscriminatory access to “911 and E911 services,” to “directory services to allow the other carrier's customers to obtain telephone numbers,” and to “operator call completion services.” 47 U.S.C. Se 271(c)(2)(B)(vii)(I), (II), and (III).

1. 911 and E911 Access

Competitors must have access to SWBT's 911 and E911 services at parity with access SWBT provides itself and its customers. To ensure this, SWBT must obtain 911 database entries for competitive LECs that are as accurate and reliable as SWBT's own database entries. Also, SWBT must provide competitors unbundled access to 911 database and 911 interconnection. This includes provisioning of dedicated trunks at parity with what SWBT provisions to itself. SWBT asserted the access to 911 service provided to competitive LEC customers is identical to what SWBT provides to its own customers. Staff's Report, 66.

Recurring and non-recurring charges for these services have been established in Docket No. 97-SCCC-149-GIT. Staff's listed the performance measures used to monitor SWBT's conduct regarding this checklist item. No results were reported on several of the performance measures. Others showed SWBT's conduct is consistently within the normal range. None of the parties to this proceeding commented on this section. Staff recommended the Commission find

SWBT is meeting its obligations under this checklist item by providing nondiscriminatory access to 911 and E911 services. Staff's Report, 66-67.

2. Directory Assistance Service and Operator Services

The Federal Act requires all LECs to permit nondiscriminatory access to "operator services, directory assistance, and directory listing, with no unreasonable dialing delays." 47 U.S.C. § 251(b)(3). A BOC must be in compliance with regulations implementing § 251(b)(3) to satisfy requirements of § 271(c)(3)(B)(vii)(II) and (III). Nondiscriminatory access to directory assistance and directory listings means customers of all telecommunications service providers should be able to access each LEC's directory assistance service and obtain a directory listing on a nondiscriminatory basis, notwithstanding the identity of the telephone service providers of either the requesting customers or the customer whose directory listing is requested. Staff's Report, 67. Furthermore, nondiscriminatory access to operator services means a telephone service customer must be able to connect to a local operator by dialing "0" or 0-plus the desired number regardless of the identity of the local telephone service provider. Competing carriers may provide operator services and directory assistance by purchasing the service from SWBT on a resale basis or through their own facilities. Facilities-based providers can obtain the listing information in SWBT's database or through directory listings on a "read only" or a "per dip" basis. Staff's Report, 67-68.

SWBT indicated directory assistance and operator services are not on the list of required UNEs and, therefore, are not subject to TELRIC pricing. However, directory assistance and operator services prices must still be just and reasonable and not unreasonably discriminatory. 47 U.S.C. §§ 201(b) and 202(a). Staff's Report, 68. Responding to comments by competitive LECs, SWBT agreed to amend the K2A to reflect lower prices for facilities-based providers to more closely resemble TELRIC prices. Staff disagreed with comments by competitors and concluded SWBT's decision to remove directory assistance and operator services from the list of UNEs is consistent with the UNE Remand Order. Staff concluded the prices for directory assistance and operator services listed in the K2A as adjusted are reasonable. Staff's Report, 69.

SWBT asserted the processes it uses to provide directory and operator services to resellers and facilities-based providers meets this checklist item. According to SWBT, its directory and operator services offerings are used by ten facilities-based providers and fifteen resellers. It bills resellers of directory and operator services at retail rates less a wholesale discount. According to SWBT, the K2A reflects "market-based" prices to be charged facilities-based providers.

The overall compliance rate for this checklist item in Kansas for June through September is 80.0%. Sept. Perf. Jt. Affid., Attachment F-1.

Conclusion: The Commission concludes SWBT has met its obligation under checklist item 7. SWBT appears to be providing nondiscriminatory access to 911 and E911, to directory assistance, and to operator call completion services.

H. Checklist Item 8 – White Page Directory Listings

SWBT must provide white pages directory listings for customers of other carriers' telephone exchange service. 47 U.S.C. § 271(c)(2)(B)(viii). The Federal Act also requires SWBT to provide nondiscriminatory access to directory listings. 47 U.S.C. § 251(b)(3). To comply with this checklist item, SWBT must provide nondiscriminatory appearance and integration of white page directory listings to competitive LECs' customers and white page listings for competitors' customers with the same accuracy and reliability it provides its own customers. Staff's Report, 70.

SWBT lists customers of competitive LECs in the same manner as its own customers and makes available the same listing options for customers of resellers and facilities-based providers. SWBT makes available to competitive LECs additional copies of the directory, beyond those distributed to subscribers, based on what the competitive LEC predicts its need will be. Staff concluded it would be unreasonable to require SWBT to publish extra copies of a directory to guard against a competitive LEC's incorrect forecast. Rates were established in Docket No. 97-SCCC-149-GIT. Staff's Report, 70.

Staff noted no specific, related performance measures report directory proficiency, but no evidence suggests a systemic problem exists for a significant number of listings for Kansas competitive LEC subscribers. Staff committed to a vigilant review of ongoing directory related concerns experienced by competitive LECs. Staff concluded SWBT is meeting its obligations under this checklist item by providing white pages directory listings for its competitors' customers. Staff's Report, 71.

Conclusion: The Commission concludes SWBT complies with the requirements of checklist item 8.

I. Checklist Item 9 – Number Administration

Number administration refers to the administration and assignment of central office codes to requesting facilities-based telecommunications providers. Under this checklist item, SWBT was required to provide nondiscriminatory access to telephone numbers for other carrier's telephone exchange service customers until guidelines, plans or rules were established for administering number assignment. 47 U.S.C. § 271(c)(2)(B)(ix). In January 1999 the number administration functions were transferred to an independent third party, the North American Numbering Plan Administration (NANPA). Staff noted this ensures SWBT requests Central Office Codes in the same manner, and using the same process, as competitive LECs. Staff's Report, 72.

Conclusion: The Commission finds SWBT is in compliance with this checklist item 9.

J. Checklist Item 10 – Databases and Associated Signaling

SWBT must provide nondiscriminatory access to its databases and associated signaling necessary for call routing and completion. 47 U.S.C. § 271(c)(2)(B)(x). To comply with this checklist item, SWBT must provide or offer to provide 1) signaling networks, including signaling links and signaling transfer points; 2) call-related databases necessary for call routing and completion, including line-information databases, toll-free databases, downstream number portability databases and Advanced Intelligent Network databases; and 3) service management systems used for call-related databases necessary for call routing and completion. Call related databases include the calling name database, 911 and E911 databases. Staff's Report, 72.

Access on an unbundled basis to call related databases is included in the K2A. No comments were received concerning SWBT's performance under this checklist item. Although no performance measurements have been specifically established for this item, Staff notes alternative SS-7 providers are in service today. Furthermore, Staff indicated it is not aware of any complaints by competitive LECs concerning interconnection with SWBT's SS-7 network. Staff's Report, 73.

Conclusion: The Commission finds SWBT has complied with checklist item 10.

K. Checklist Item 11 – Number Portability

Until the FCC issues regulations to require number portability, SWBT must provide interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. 47 U.S.C. § 271(c)(2)(B)(xi). The FCC requires SWBT to offer interim number portability "to the extent technically feasible" and to gradually replace interim number portability with permanent number portability. The FCC has established guidelines that mandate a competitively neutral cost-recovery mechanism for interim and for long-term number portability. *Texas Order*, ¶ 370.

Several performance measures apply to this checklist item. Staff's Report, 74-75. Staff closely monitored the initial deployment of local number portability in the largest 100 metropolitan service areas and is satisfied SWBT met the initial deployment schedule. Staff concluded SWBT is meeting requests of competitive LECs for additional deployment in Kansas. Staff indicated it is not aware of any complaints by competitive LECs about obtaining local number portability from SWBT. Staff's Report, 75. Although the degree of compliance on performance measures varied by individual component and by months, Staff found the data demonstrated SWBT in general provides nondiscriminatory access to local number portability. Staff's Report, 75. AT&T, in response to Staff's Report, noted performance measurements on coordinated conversion measures underwent a thorough overhaul during the Texas six-month

review, resulting in substantial revision of some measures and creation of new measures on provisioning trouble outages. AT&T Comments Regarding KCC Staff Recommendations, 17-18. Revisions to performance measures made at the six-month review in Texas were incorporated into the K2A. The overall compliance rate for this checklist in Kansas for July through September was 95.2%. Sept. Perf. Jt. Affid., Attachment X.

Conclusion: Although Staff should monitor performance to be sure compliance improves and no backsliding occurs, the Commission finds SWBT is in compliance with checklist item 11.

L. Checklist Item 12 – Local Dialing Parity

Local dialing parity allows customers to make local calls in the same manner regardless of which carrier provides the service. SWBT must provide nondiscriminatory access to services or information needed for a competitive LEC to implement local dialing parity. 47 U.S.C. § 271(c)(2)(B)(xii). SWBT has a duty to permit providers of telephone exchange service and toll service to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing without unreasonable dialing delays. 47 U.S.C. § 251(b)(3). To fulfill its obligation, SWBT must establish customers of competing providers can dial the same number of digits to make a local telephone call regardless of the identity of the calling or called party's local service provider. Customers of competing carriers cannot experience greater dialing delay than SWBT's customers. Staff's Report, 75.

SWBT asserted dialing requirements are the same for its customers and competitive LEC customers. No built-in delays exist for competitive LEC customers. No competitive LECs disputed SWBT's claims. Staff pointed out SWBT must provide nondiscriminatory access to 911, directory assistance, operator services, directory listings and telephone numbers (checklist items 7, 8, and 9) to comply fully with this item. Although no performance measures explicitly relate to this checklist item, Staff noted checklist items 7 and 9 have several relevant performance measures. Staff recommended the Commission find SWBT has complied with checklist item 12 if it finds compliance with checklist items 7, 8, and 9.

Conclusion: The Commission finds SWBT complies with checklist item 12.

M. Checklist Item 13 – Reciprocal Compensation

Reciprocal compensation arrangements are agreements between interconnecting carriers about charges for the transport and termination of local telecommunications traffic over their respective networks. SWBT must enter into reciprocal compensation arrangements under the requirements of § 252(d)(2) of the Federal Act. 47 U.S.C. § 271(c)(2)(B)(xiii). Under § 252(d)(2), a state commission cannot consider the terms and conditions for reciprocal compensation to be just and reasonable unless (1) the terms and conditions provide each carrier mutual recovery of costs associated with transport and termination on each carrier's network facilities of calls originating on the network facilities of the other carrier, and (2) the terms and

conditions determine the costs based on a reasonable approximation of additional costs for terminating such calls. 47 U.S.C. § 252(d)(2)(A). Exchange of traffic under a bill-and-keep arrangement is not precluded. 47 U.S.C. § 252(d)(2)(B)(i). Also, either the FCC or a state commission can engage in a rate regulation proceeding to establish additional costs of transporting or terminating calls or can require carriers to maintain records recording the additional costs of such calls. 47 U.S.C. § 252(d)(2)(B)(ii).

The K2A offers two alternative arrangements for reciprocal compensation. The first allows parties to exchange traffic on a bill-and-keep basis. The second allows the competitive LEC to negotiate the terms and conditions for compensation while operating under the K2A with a true-up based on the final terms. Currently the industry is unable to maintain appropriate records for traffic originated through a third party facility-based carrier and terminated to a competitive LEC using unbundled switching. Staff's Report, 77.

SWBT has not provided reciprocal compensation for telephone calls to Internet Service Providers (ISPs), but must comply with any final order by the FCC or this Commission determining ISP traffic is local and subject to reciprocal compensation. Although the FCC initially determined ISP-bound traffic was not local, it specified state commissions may impose reciprocal compensation obligations for ISP-bound traffic. The United States Court of Appeals for the District of Columbia has vacated this FCC ruling and remanded the case for a full explanation of why the FCC concluded ISP-bound traffic is not local and subject to the reciprocal compensation requirements of § 251(b)(5). *Bell Atlantic Telephone Companies v. F.C.C.*, 206 F.3d 1, 9 (D.C. Cir. 2000).

On May 19, 2000, this Commission opened Docket No. 00-GIMT-1054-GIT to investigate whether reciprocal compensation should be paid for ISP-bound traffic. A hearing was conducted on September 7, 2000. Legal briefs are due November 21, 2000.

Conclusion: Subject to SWBT's compliance with the FCC's and this Commission's decisions regarding reciprocal compensation, the Commission concludes SWBT has complied with checklist item 13.

N. Checklist Item 14 – Resale

Under this checklist item, SWBT must offer competitive LECs for resale at wholesale rates any telecommunications service the incumbent provides at retail to subscribers who are not telecommunications carriers. 47 U.S.C. §§ 251(c)(4)(A), 271(c)(2)(B)(xiv). Wholesale rates are retail rates charged to subscribers for the telecommunications service requested, excluding the portion attributable to costs that will be avoided by the local exchange carrier, such as marketing, billing, and collection costs. 47 U.S.C. § 252(d)(3). SWBT has a duty not to impose unreasonable or discriminatory conditions or limitations on resale. A state commission, consistent with FCC regulations, can prohibit a reseller that obtains at wholesale rates a telecommunications

service, which is available at retail only to a category of subscribers, from offering such service to a different category of subscribers. 47 U.S.C. § 251(c)(4)(B).

No comments were received on this checklist item, but one commentator on the K2A contended SWBT was obligated to offer resale of voice mail and xDSL. SWBT notes voice mail is provided by Southwestern Bell Messaging Services Incorporated and xDSL services are provided by ASI. Staff's Report, 80. Staff concluded SWBT is not obligated to offer voice mail or xDSL for resale under § 251(c)(4). Staff's Report, 82. See also, *Texas Order*, ¶ 313.

Several performance measures apply to this checklist item, which were established in Texas proceedings after this Commission's Interim Report. Staff's Report, 81-82. Staff concludes the performance measures indicate SWBT is providing resale in a nondiscriminatory manner. Staff's Report, 83. Furthermore, Staff describes the discount rates established by the Commission. Staff's Report, 82-83. The compliance rate for this checklist item in Kansas for July through September was 97.3%. Sept. Perf. Jt. Affid., Attachment Z.

Conclusion: This Commission concludes SWBT provides resale through interconnection agreements and the K2A. The performance measurement data reflect overall compliance by SWBT with its obligation to provide resale. The Commission concludes SWBT is in compliance with checklist item 14.

V. COMPLIANCE WITH SECTION 272, 47 U.S.C. § 272.

The FCC will not approve an incumbent LEC's application for in-region, interLATA service until the incumbent demonstrates the authorization will be carried out in accordance with the safeguards required of separate affiliates in § 272. 47 U.S.C. § 271(d)(3)(B). Staff thoroughly examined SWBT's compliance with the requirements of § 272. In its Report, Staff discusses each safeguard in detail, including a review of each concern about § 272 compliance this Commission expressed in its Interim Report. No interveners filed comments regarding SWBT's compliance with § 272. The Commission does not believe it necessary to restate here the discussion relating to each safeguard contained in Staff's Report. Instead, each safeguard will be summarized with reference to appropriate sections of Staff's Report.

A. Separate Affiliate Required

As specified in § 272(a)(2), a BOC cannot be involved in (A) manufacturing activities, (B) origination of interLATA telecommunications services with specified exceptions, and (C) interLATA information services. Instead these services must be provided by a separate affiliate as defined in § 272. Staff reviewed SWBT's separate affiliates and discusses their operations. Staff's Report, 84-86. Based on the evidence presented, Staff recommended this Commission find SWBT satisfies the requirements of § 272(a).

B. Structural and Transactional Requirements

Subsection (b) of § 272 lists five requirements for separate affiliates. Staff discussed the five requirements and the law concerning this subsection. Staff's Report, 86-87. Then Staff reviewed the facts supporting each of the five requirements as follows: (1) operate independently, Staff's Report, 88-89; (2) maintain separate books, records, and accounts, in accordance with Generally Accepted Accounting Principles (GAAP), Staff's Report, 89-91; (3) have separate officers, directors, and employees, Staff's Report, 91; (4) not obtain credit permitting recourse to SWBT's assets, Staff's Report, 91-92; and (5) conduct all affiliate transactions on an arm's length basis, reduced to writing, and available for public inspection, Staff's Report, 92-98. Based on affidavits submitted by SWBT and its affiliate for in-region, interLATA long distance service in Kansas, Staff concluded SWBT complies with § 272(b)(1)-(5).

C. Nondiscrimination Safeguards

In its dealings with affiliates, SWBT (1) cannot discriminate between the affiliate and any other entity in provisioning or procurement of goods, services, facilities, and information, or the establishment of safeguards; and (2) must account for all transactions in accordance with accounting principles designated or approved by the Commission. 47 U.S.C. § 272(c). This means an incumbent must provide the same goods, services, facilities, and information to any unaffiliated entities, including those non-telecommunications related, at the same rates, terms, and conditions as those provided its § 272 affiliates. Furthermore, SWBT cannot develop new services for its § 272 affiliate or purposely delay implementing an innovative new service until its § 272 affiliate is ready to provide competing services. Staff's Report, 98-99.

Staff summarized the affidavits and other record submitted by SWBT to establish it provides goods, services, facilities and information in a nondiscriminatory manner. Staff's Report, 99-101. Also, Staff reviewed the compliance programs and training done to insure SWBT meets the requirements of § 272 in its dealings with affiliates. Staff's Report, 101-02.

D. Biennial Audit

Any company required to operate a separate affiliate must obtain a joint Federal/State audit every two years pursuant to § 272(d). The audit is conducted by an independent auditor to examine company compliance with § 272 requirements, especially the separate accounting requirements. Staff reviewed the requirements of § 272(d) as well as the annual audits required following the merger of SBC Communications, Inc., SWBT's parent company, and Ameritech. Staff's Report, 102-04. Staff plans to participate in the biennial audits. The first audit will cover the first 12 months of operation and include all assets since the § 272 affiliate or its predecessor was incorporated. Also, the audit will cover all services the separate affiliate is required to provide under § 272. Staff recommended the Commission find SWBT has met its burden of showing its intent to comply with § 272(d) audits. Staff's Report, 104.

E. Fulfillment of Equivalent Requests

SWBT and its affiliates must fulfill any of the four requests defined in § 272(e). Fulfillment of these requests must occur in a response time no longer than the time it takes for SWBT to respond to its own or its affiliate's request. Staff examined each of the four requests SWBT must fulfill individually as follows: (1) SWBT must fulfill equivalent service requests for telephone exchange and exchange access, including similar size, level of complexity, and geographic location, within equivalent intervals and on an equivalent basis. Staff's Report, 105. (2) SWBT cannot discriminate in the dissemination of technical information or interconnection standards related to exchange access services, which includes information regarding planned network changes subject to FCC network disclosure requirements until public notice has been given. Staff's Report, 106. (3) SWBT's § 272 affiliates must pay for telecommunications services at the same rates and on the same terms and conditions, including volume and discounts, as non-affiliates. Staff's Report, 106. (4) SWBT will provide interLATA or intraLATA facilities or services to its affiliates only if such facilities or services are available to all carriers at the same rates, terms and conditions. These requirements continue for as long as the Merger Conditions apply to SWBT's relationship with ASI.

Although no interveners filed comments about § 272 compliance, AT&T and CURB filed public interest comments asserting access rates should be reduced before SWBT can comply with § 271. Staff's Report, 107-08. Staff noted this concern about access rates suggests SWBT may discriminate against unaffiliated carriers by charging above-cost intrastate access rates. Staff's Report, 108. Staff reviewed how a BOC can meet the requirements of § 272: (1) The affiliate must purchase exchange service and exchange access service at tariff rates. (2) The affiliate must acquire unbundled elements or services from SWBT at prices available on a nondiscriminatory basis under § 251. (3) SWBT must file with this Commission a statement of generally available terms under § 271(c)(1)(B), including prices available on a nondiscriminatory basis. (4) SWBT must make volume and term discounts available on a nondiscriminatory basis to all unaffiliated carriers. Staff's Report, 108-09. Based upon a review of the evidence, Staff concluded SWBT currently complies and will continue to comply with § 272(e). The concern about above-cost access rates is discussed further in the section on public interest.

F. Joint Marketing

The safeguard in § 727(g) sets out requirements about joint marketing by a BOC and its affiliate. Staff discussed efforts of SWBT and its affiliates to comply with the restrictions relating to joint marketing. Staff's Report, 110. Staff also discussed the joint marketing requirements under the Merger Conditions. Staff's Report, 110-11. No interveners commented on this section. Staff recommended the Commission find SWBT has complied with § 272(g). Staff's Report, 111.

Conclusion: After reviewing Staff's Report in detail, the Commission accepts Staff's recommendation and concludes SWBT has complied with the requirements of § 272 by meeting the safeguards it provides.

VI. PUBLIC INTEREST

Under the Federal Act, the FCC must make a finding that approval of the request to provide in-region, interLATA service is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 271(d)(3)(C). Although the Federal Act does not require this Commission to make a recommendation on public interest, nothing prohibits comments from a state commission on this issue.

This Commission concludes that whether approval of SWBT’s application is in the public interest is a policy determination that transcends a simple analysis of prepared direct and rebuttal testimony. In its Interim Report, the Commission noted it would not consider the public interest issue until all the checklist items of § 271 are met. Having found SWBT in compliance on the checklist items, the Commission will examine the public interest issue. In addressing public interest, the Commission will consider what is in the interest of the citizens of Kansas, not what is best for a particular party or group of individuals. *Central Kansas Power Co. v. State Corporation Commission*, 206 Kan. 670, 676-77, 482 P.2d 1 (1971).

The FCC has relied heavily on compliance with the 14-point checklist as an indication that a BOC’s entry into the in-region, interLATA service market is in the public interest. If the BOC has met the checklist, the FCC will not require an additional showing that the incumbent’s participation in the long distance market will produce public interest benefits. *New York Order*, ¶ 428. In reviewing SWBT’s Texas application, the FCC recognized an incumbent’s entry into the long distance market will benefit consumers if the relevant local exchange market is open to competition consistent with the competitive checklist. *Texas Order*, ¶ 419. In reaching its public interest determination, the FCC has found compliance with the competitive checklist is itself a strong indicator that long distance entry is consistent with the public interest. The FCC has consistently found consumer benefits flow from competition in telecommunications markets. *Texas Order*, 416.

Staff listed the numerous affidavits filed regarding the effect on public interest of allowing SWBT to offer in-region, interLATA services in Kansas. Staff’s Report, 111, n. 6. Although SWBT filed studies discussing the economic impact, Staff agreed with many of the parties that these studies have weaknesses and the impact on the Kansas economy will probably be less beneficial than indicated. While admitting the difficulty of quantifying the exact level, Staff concluded if the checklist items are met, benefits will accompany SWBT’s entry into the long distance market. Staff’s Report, 112.

AT&T argued disparity in access charges across the State will provide SWBT an unfair advantage in marketing its long distance services. Access charges do vary across the State. Staff noted the Commission continues to bring access charges closer to the actual cost of providing access and suggested this issue may need to be addressed in a generic docket. Staff’s Report, 112. An order by this Commission to open a generic proceeding to address access charges is

pending. Docket No. 01-GIMT-082-GIT. This Commission concludes that docket is a more appropriate proceeding to pursue this issue.

AT&T also criticized SWBT's post-271 approval behavior in Texas when Southwestern Bell Long Distance refused to serve rural customers or customers who receive local service from a competitive LEC in Texas. AT&T Reply Comments, filed August 31, 2000, 13. This Commission has refrained from dictating the business operations of long distance providers in Kansas, and in fact did not do so in Docket Number 98-GIMT-712-GIT, when AT&T did not wish to be placed on the list from which consumers in rural LEC territories would choose an intraLATA toll provider. The Commission did not demand AT&T serve rural customers in that docket and does not anticipate imposing such a mandate on SWBT.

CURB filed Reply Comments on August 31, 2000 (CURB Reply), expressing concern that Staff does not recognize the importance of the public interest test in Kansas. CURB was concerned the Commission will defer responsibility for making this decision to the FCC. CURB Reply, 7. Staff is equally concerned that SWBT's entry into the interLATA market be consistent with the public interest, but Staff's evaluation of SWBT's application focused on compliance with the checklist items and on the content of the K2A. This generic interconnection agreement will be offered to competitors and must be compliant with the Federal Act. Staff's emphasis on evaluating the checklist items and the K2A is consistent with what the FCC views as the most important considerations in an application under § 271.

CURB criticized Staff for not listing consumer benefits from approval of SWBT's § 271 application. For example, CURB asserted that before approving SWBT's application, the Commission should find that a leveling out or reduction in basic local exchange rates in SWBT exchanges will occur. CURB Reply, 15. The Commission believes one direct benefit of increased competition from approval of SWBT's § 271 application will be increased competition in the long distance market. While local service rates and quality of service may not change immediately with increased competition in the long distance market, approval of SWBT's application to provide in-region, interLATA service in Kansas may be an entry incentive for competitive LECs that so far have declined to enter the Kansas local exchange market. Additional entry should result in competitive pricing.

To address the lack of competition in the Kansas markets, CURB attempted to identify SWBT's market share in the Kansas local exchange market. CURB Reply, 11-13. The FCC recognized Congress specifically declined to adopt a market share or similar test for BOC entry into long distance. The FCC has indicated a BOC's entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition in compliance with the competitive checklist. *New York Order*, ¶ 427. While the data presented by CURB establishes competition is still developing in Kansas, it does not establish that SWBT is failing to provide nondiscriminatory access to its system. This Commission cannot assume the lack of competition is due to discriminatory behavior by SWBT.

Finally, CURB urged the Commission to be sure measures are in place to prevent SWBT from backsliding on its commitment to provide nondiscriminatory access to its systems. CURB Reply, 8-9. The Commission agrees with CURB on this issue. The FCC had the foresight to realize the incentive to provide nondiscriminatory access to its systems might wane after an incumbent gains approval to provide in-region, interLATA services. Existence of an effective performance monitoring mechanism is essential to assuring that markets remain open. The threat of meaningful penalties should be available as an incentive for SWBT to continue to behave in a nondiscriminatory manner. The FCC can revoke its approval to provide in-region, interLATA services if SWBT begins to backslide on its commitment despite the incentives provided through the performance monitoring plan. 47 U.S.C. § 271(d)(6)(A). Finally, this Commission is formulating an Expedited Dispute Resolution Process to supplement the Commission's complaint procedures to assure swift attention when a dispute interrupts service or affects the provisioning of any service, functionality, or network element.

Throughout its report, this Commission has stressed repeatedly the need to continue monitoring SWBT's compliance with the checklist to assure competition. As competition in the Kansas market grows through increased commercial volumes and entry of additional carriers, and as technology advances, new conflicts no doubt will develop and new issues will arise. This Commission is the appropriate conduit for resolution of those conflicts and issues. The technical, legal and advisory staff of this Commission must be involved in monitoring performance measures, resolving expedited disputes, and assuring compliance with orders of this Commission and the FCC. This Commission concludes increased competition in telecommunications in the state of Kansas is in the public interest. However, the interests of the citizens of Kansas can only be assured by continuing supervision by this Commission of SWBT's performance.

VII. PERFORMANCE PLAN

SWBT's Performance Plan is discussed in detail in Staff's Report. Staff's discussion is broken into five parts. First, Staff gives background information on the Plan. Staff's Report, 115-19. Second, the report discusses the purposes and functions served by the proposed Plan. Staff's Report, 120. In Part 3, Staff describes SWBT's proposed performance Plan. Staff's Report, 120-32. Then, in Part 4, Staff lists concerns of Staff and other parties. Staff's Report, 132-36. Part 5 gives Staff's conclusion. Staff's Report, 136.

Staff's recommendation was summarized as follows:

While far from perfect, SWBT's proposed Performance Plan appears to be workable. It has already been largely fashioned by the hands of the FCC and the Texas PUC, and yet embodies new changes sought by the [Commission] Staff and Kansas [competitive LECs]. It is Staff's position that those new changes represent

improvements to an already (FCC and Texas) approved Plan. It is also Staff's position that the new changes could be found by the Kansas Commission to be in the public interest; therefore, Staff can recommend that SWBT's proposed Performance Plan be implemented. Staff's Report, 115.

For the changes, Staff directed the Commission to the K2A, Attachment 17. Staff's Report, 136.

Staff's participation in the six-month review provided by the Texas PUC is an important aspect of this Commission's support of SWBT's application. The K2A provides for a review of the performance measures to determine if measures should be added, deleted or modified. K2A, Attachment 17, 6.4. SWBT, the competitive LECs, and Commission representatives from SWBT's five-state area that has adopted this provision will participate in the review to be held every six months in Texas. Modifications proposed at the review will be presented to this Commission for approval. Also, this Commission is able to modify the performance remedy plan to address problems with the remedy plan that are specific to Kansas. SWBT included language in the K2A to clarify that the provisions of the K2A do not prevent the Commission from re-evaluating the performance remedy plan upon the request of Staff. K2A, Attachment 17, 6.4.

The Commission agrees that SWBT's Performance Plan is not perfect but notes it has the benefit of input from the Texas PUC and the FCC. It is important to this Commission that the Plan has the flexibility to incorporate changes as needed when new issues must be addressed or problems are identified. SWBT's Proposed Performance Plan should be implemented.

VIII. EXPEDITED DISPUTE RESOLUTION PROCESS

This Commission agrees with comments filed by parties in this proceeding suggesting an expedited dispute resolution process for telecommunications carriers be developed. This procedure will be available to rapidly address disputes between competitive LECs and incumbent LECs. Staff filed a proposed procedure and the parties to this proceeding were invited to comment. At its Administrative Meeting on October 4, 2000, the Commission generally approved a revised procedure that incorporated many of the comments by the parties. The Commission expressed a preference to adopt the procedure as a regulation.

A docket was opened on October 24, 2000, to solicit comments on the proposed Expedited Dispute Resolution Process. Docket No. 01-GIMT-335-GIT. A copy of the proposed process is attached. Attachment 13. The Commission has solicited comments from all incumbent and competitive LECs certificated in Kansas. Any necessary modifications to the process will be made based on those comments. The Commission will adopt the process on an interim basis while appropriate steps are taken to make this procedure a permanent Commission regulation.

The dispute resolution process is also valuable in providing the Commission with feedback about the success of the K2A. The Commission will have the opportunity to see what problems

have arisen and to determine what modifications, additions, or deletions need to be made in the performance measures. Also, the Commission will be able to determine whether the penalties are adequate and to modify them if necessary.

IX. CONCLUDING REMARKS: Assurance of Future Compliance is Essential.

In its Report, Staff identified several concerns about SWBT's proposed performance remedy plan but concluded none of them were serious enough to recommend denial of the plan. The Commission agrees with Staff that these concerns must be monitored to assure SWBT's future compliance with the checklist items and to ensure the validity of SWBT's proposed Performance Plan. Essential to the Commission's finding that SWBT has met the checklist of § 271 and the requirements of § 272 is the ability to assure future compliance. Recognition of the following concerns about the proposed Performance Plan is critical to continued monitoring of the development of competition in the telecommunications industry in Kansas.

The integrity of the Performance Plan depends directly upon the on-going verification and validation of the source data used to measure performance. For a regulated entity, the need to verify or audit performance data is similar to the need to audit expense data. Thus, performance data should be audited and performance statistics checked for accuracy. Staff has advised the Commission additional resources may be required to perform such audits and checks in the future.

SWBT is in the process of making the source or raw performance data available through a website. This process will facilitate verification of the data by Staff and competitive LECs, thereby substantially enhancing the Commission's ability to verify the accuracy of the statistical calculations. The target date for completing this process was November 1, 2000, but it was not met. Staff's Report, 133. Now SWBT has indicated this process will be completed by January 1, 2001. SWBT's timely completion of this process is critically important. Once this process is complete, the competitive LECs will be able to review their individual company data and point out problems to Staff and this Commission. The Commissioners will rely upon Staff monitoring and the competitive LECs to bring problems to its attention.

Staff discussed its concern about the frequency of small sample sizes reported for performance measurements. Small sample sizes tend to generate unreliable test statistics, making it difficult to draw reliable conclusions regarding SWBT's performance. Staff did not have a workable solution to the small sample problem but urged the Commission to be cautious when dealing with complaints based upon small sample sizes. Staff Report, 133.

The use of Z-testing has the effect of lowering SWBT's benchmark testing. Changes adopted as a result of the recent six-month review in Texas have greatly reduced SWBT's use of Z-tests when evaluating its performance relative to fixed benchmarks. Furthermore, as SWBT and Staff gains experience in designing proper benchmarks, it may be possible to eliminate Z-testing, which would simplify application of the plan. Staff's Report, 133. This Commission expects SWBT to reduce its reliance on Z-testing of benchmark performance in the future.

The derivation of the “K” Table values may lack analytical rigor. Staff was unable to complete a thorough review of that derivation, but nevertheless accepted that application of the “K” exclusions is conceptually appropriate. As soon as practical, Staff will complete a thorough examination of the “K” Table derivation. Staff’s Report, 132. Staff will present its research findings at a six-month review of the performance measures. As the plan evolves, Staff’s concerns about the “K” Table exclusions may be resolved.

Staff also expressed concern about the lack of any formal arrangement for dealing with Type II errors. The “K” Table exclusions explicitly deal with Type I errors, which serve to protect SWBT from being falsely accused of providing sub-standard performance to competing carriers. Nothing in the Plan explicitly protects the competitive LECs from test results that show SWBT to be in compliance when, in fact, SWBT is not. Staff concluded Type I and Type II errors are of equal importance; therefore, Staff is interested in examining the feasibility of developing a method to balance the likelihood of those errors occurring. AT&T has expressed an interest in developing such a methodology, and other competitive LECs may be interested as well. If a workable balancing methodology is developed, Staff stated it will use the six-month review process to propose such changes. Staff’s Report, 133-34.

This Commission’s approval of SWBT’s application under § 271 relies heavily upon its ability to make changes in the Performance Plan. Although Staff should take advantage of the six-month reviews to share information about, and to report its findings on, the Performance Plan, the Commission directs Staff to keep it informed of any need to review and revise the Performance Plan in Kansas. Staff should not wait for the six-month review conducted by the Texas PUC if it identifies problems this Commission needs to address immediately. The Commission will remain diligent to complaints of competitive LECs that SWBT is providing discriminatory service even when the test statistics show compliant performance by SWBT. The Commission is mindful that statistical testing is imperfect. Although significant effort went into creation of SWBT’s proposed Performance Plan, it is far from perfect. As Staff noted, experience may show the only way to get adequate performance from incumbent wholesale providers is through the structural unbundling of retail and wholesale services. Staff’s Report, 134.

The Performance Plan is scheduled to expire when the K2A expires in two years, or in four years if the FCC approves SWBT’s application. Prior to expiration of the K2A, the Commission will need to be sure an appropriate plan has been implemented to replace the K2A Performance Plan that contains performance measures and a performance remedy plan.

Staff has expressed concern that the penalties contained in the Performance Plan may not be large enough to deter SWBT from backsliding behavior. Staff Comments on K2A Attachment 17. If SWBT’s behavior is habitually noncompliant, the Commission retains the authority to address the level of penalties. The Commission expects Staff to be diligent in reviewing the adequacy of penalties in the Performance Plan.

The Commission again stresses that its endorsement of SWBT's application is based on an expectation SWBT will fulfill the commitments it has made to this Commission and to the competitive LECs and that SWBT will cooperate with Staff in efforts to improve the performance remedy plan. The Commission anticipates these commitments will be met and expects Staff to apprise it of any progress made addressing these concerns.

This Commission concludes that SWBT has complied with the checklist of § 271, that SWBT has complied with the requirements of § 272, and that it is in the public interest of this state to approve SWBT's application under § 271. This Report has stressed the need for continued involvement of this Commission and continued monitoring by its Staff regarding SWBT's compliance with the checklist of § 271. If the FCC grants SWBT's application for in-region, interLATA service, this monitoring is essential to assure the growth of competition of telecommunications in Kansas.

Approved by:

John Wine, Chair

Cynthia L. Claus, Comm.

Brian J. Moline, Comm.

DATED: November 20, 2000

ATTACHMENTS